38-387
138-389

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 158.

R. H. BROWN ET AL., APPELLANTS,

vs.

CHARLES W. TROUSDALE AND JAMES ALEXANDER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

FILED OCTOBER 8, 1887.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 158.

R. H. BROWN ET AL., APPELLANTS,

vs.

CHARLES W. TROUSDALE AND JAMES ALEXANDER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

INDEX.

	Original.	Print.
Caption	1	1
Order to docket cause	1	1
Transcript from State court	1	1
Petition	1	1
Order on petition granting injunction, &c.	46	20
Injunction bond	48	21
Summons	50	23
Order of injunction	57	26
Return on summons and injunction	58	26
Exhibit B—Poll book for an election held at South Carrollton, Muhlenburgh county, Kentucky, on Saturday, May 30, 1868	59	27
Poll book for an election held at Boggess precinct, Muhlenburgh county, Kentucky, on Saturday, May 30, 1868	68	32
Poll book for an election held at the Court-House precinct, Muhlenburgh county, Kentucky, on Saturday, May 30, 1868	78	37
Poll book for an election held at Paradise precinct, Muhlenburgh county, Kentucky, on Saturday, May 30, 1868	86	42
Poll book for an election held at Myers precinct, Muhlenburgh county, Kentucky, on Saturday, May 30, 1868	90	44

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 1, 1890.

	Original.	Print.
Exhibit B—Poll book for an election held at Summers precinct, Muhlenburgh county, Kentucky, on Saturday, May 30, 1868	93	46
A—Certified copies of orders, etc., of the Muhlenburgh county court	99	49
B—Certified copies of the certificates of the officers of the election May 30, 1868	115	56
Summons against county judge *et al.*	118	58
Order of injunction	126	61
Return on summons and injunction	127	62
Amended petition	127	62
Amended petition	130	63
Notice of motion to dissolve injunction	131	64
Motion to dissolve injunction	132	64
Demurrer to petition	132	65
Order setting motion and demurrer for hearing	133	65
Petition of James Alexander to be made party defendant	133	65
Order making James Alexander party defendant	134	66
Petition of Charles W. Trousdale to be made party defendant	135	66
Order making Charles W. Trousdale party defendant	135	67
Petition for removal	136	67
Bond for removal	139	69
Order filing petition and bond	142	70
Affidavit of Robert Glenn and George D. Park	142	71
C. L. Morehead	143	71
Louis Jones	144	72
Answer of Robert Glenn	145	72
George D. Park	146	73
Order for removal	146	73
Clerk's certificate	148	74
Motion to remand	148	74
Grounds in support of motion to remand	149	74
Interrogatories to defendants	151	75
Motion to dissolve injunction	156	77
Notice of motion to dissolve injunction	156	78
Order overruling motion to remand and dissolving injunction	159	79
Answer of Charles W. Trousdale	159	79
Exhibit A X—Certified copies of orders, &c., Muhlenburgh county court	180	88
Replication to answer of Charles W. Trousdale	186	91
Answer of James Alexander	187	92
Replication to answer of James Alexander	195	95
Agreed statement of facts	197	96
Decree dismissing bill, &c.	203	98
Order denying motion to reinstate injunction	203	98
Order allowing appeal	203	99
Order filing appeal bond	204	99
Appeal bond	204	99
Evidence for complainants	205	100
Testimony of Daniel J. Gish	205	100
W. T. Stiles	208	101
John Henry Frost	227	108
Joseph P. Hendricks	233	111

	Original.	Print.
Testimony of Joseph Adcock	249	117
Exhibit * Adcock—Certified copies of orders, &c., Muhlenburgh county court	264	123
Y Adcock—Certified copies of orders, &c., Muhlenburgh county court	290	133
Testimony of Henry Green Newman	310	142
Sterling M. Eaton	314	144
M. J. Roark	330	150
Exhibit "M. J. R."—Letter of M. J. Roark, July 20, —	347	157
Testimony of David B. Roll	351	159
S. J. Hunt	362	163
John Edmund Rhoads	378	168
Exhibit "J. E. R."—Report of board of examiners at August election, 1886	390	178
Testimony of Jacob M. Vick	391	174
Louis Jones	393	175
J. J. Wood	443	193
Q. B. Coleman	447	194
Exhibit 1 (Q. B. Coleman)—Proceedings of funding board of Muhlenburgh county	449	195
Testimony of John H. Morton	486	212
Stipulation as to erasures in order, &c.	498	217
Evidence for defendants	499	217
Testimony of S. P. Love	499	217
Exhibit "Love"—Report to Muhlenburgh county court of claims by S. P. Love, judge	612	258
Exhibit "Order 1"—Order of Muhlenburgh county court, June 3, 1868	623	263
Exhibit "S. P. L."—Order of Muhlenburgh county court, May 15, 1868	626	264
Testimony of Charles Eaves	627	265
Thomas J. Eades	637	269
Thomas J. Jones	639	269
John A. Stokes	641	270
W. H. Yost	643	270
Stipulation as to evidence, &c.	646	272
Extracts from order book No. 10, Muhlenburgh county court	647	272
Extracts from order book No. 11, Muhlenburgh county court	652	275
Extracts from order book No. 10, Muhlenburgh county court	657	277
Clerk's certificate	681	290

1 Proceedings of the circuit court of the United States for the district of Kentucky, at a regular term of said court began and held at Louisville on Monday, February 21st, 1887.

Present: The Hon. Howell E. Jackson, circuit judge of the United States for the sixth circuit.

R. H. BROWN *et al.*, Complainants,
vs.
ALEX. TINSLEY *et al.*, Defendants.

Be it remembered that heretofore, to wit, at the February term, 1885, on Tuesday, September 15th, 1885, came the defendants Alexander and Trousdale, by Rodman and Brown, their counsel, and filed copies of process and other proceedings had in the Muhlenburgh circuit court in this case. The defendants above named entered their appearauce herein, and on their motion it is ordered that this case be placed upon the docket of this court, and that it be tried here in its order.

The copies of the process and other proceedings above referred to are as follows:

Petition.

Muhlenburgh Circuit Court.

R. H. BROWN, W. A. DUKES, J. F. MORRIS, W. H. MORRIS, ANDREW Walker, Sidney Gardner, Robert Lockett, Thomas Reynolds, W. E. Glenn, David Wakeland, J. W. Morris, T. W. Wood, W. O. Davis, Jas. Williams, S. L. Weaver, Sam. Davis, C. A. Wick-
2 liff, Cal. Hamalton, John Williams, S. N. Estes, A. M. Southard, Chas. Dewbery, Albert Roark, Martin Miller, G. Grable, John Fluallen, Chas. Green, W. T. Davis, A. Y. Glen, E. P. Tinsley, B. F. Tinsley, Charles Centers, W. H. Arnold, B. S. Casebier, B. Y. Casebier, J. D. Casebier, Moses Tinsley, John Bruce, Burt Flerity, J. R. Harris, J. H. Hunter, J. F. Jarvis, Gabriel Doss, J. F. Whitehouse, D. J. Jones, D. H. Whitehouse, James Rose, E. Bagwell, J. W. Noffsinger, E. A. Noffsinger, W. H. Noffsinger, R. T. Casebier, Mike Rose, G. B. Rose, Geo. Doss, W. P. Drake, G. A. Boothe, A. R. Adcock, T. A. Sisk, S. B. Drake, W. B. Doss, Wm. Drake, Chas. Lewis, T. R. Helsley, Joel Doss, Cal. Carver, Len Carver, Jr., Thos. Carver, Rob't Gibbs, W. C. Gibbs, J. H. Smith, Ac. Rust, Joe Carsey, Geo. Carsey, John Driskill, Peter Williams, David Sweeney, Sam. Mitchell, John Ham, J. C. Davenport, Peter Revlet, John Namy, Alf. Buckanan, W. F. Weatherford, Wesley Green, G. S. Ball, John Tuley, H. C. Mercer, J. R. Randolph, Rich. Stewart, Richard Chandler, Gus. Stoval, Alf. Miller, J. A. Forehan, W. T. McElvain, B. B. Jones, W. T. Vincent, Lewis Stewart, W. S. Underwood, T. G. Bruce, P. M. Starks, W. C. Stewart, J. T. Roark, John Woods, John Jagoe, Virgie Jagoe, Dan. Pall, J. H. McElvain, W. B. Stewart, John Johnson, Lee

Ezell, Jesse Mercer, C. W. Stoball, E. B. Stewart, J. W. Vincent, T. J. Hendricks, J. B. Forehan, T. B. Vincent, J. T. Mercer, J. T. Ward, Jesse Roark, J. C. Caldwell, W. H. Buck,
3 A. G. Mercer, G. M. Ball, T. B. Wilkins, L. M. Gassett, P. H. Stovall, C. T. Medseker, C. M. Lewis, L. J. Stovall, J. S. Hendricks, F. M. House, T. J. Jones, J. M. Forehan, D. C. Jones, Aaron Wickliffe, J. M. Sweeney, E. M. Underwood, A. J. Browning, R. C. Underwood, J. M. Mercer, J. A. Stewart, James Corley, J. W. Gill, Robert Stewart, J. N. Roark, Dan. Stewart, J. H. Myers, M. S. Rittinger, J. H. Vincent, A. E. Ball, Thos. Haley, Sam. Wilkins, Bam Wilkins, Phil. Wilkins, Rob't Jarvis, Wm. Jarvis, Halleck Jarvis, Noah Gossett, James Gill, George Helaldson, Wm. Brown, W. S. Gossett, J. W. McDonald, J. E. McDonald, J. H. Eady, J. B. Stone, L. J. Eads, Jr., Green Morris, Joe Cobb, W. M. Overhutts, L. E. Tucker, J. C. Cobb, J. E. Gill, Sam. McNary, John Moore, Dan. McNary, Jas. McNary, Jesse Hays, Peter Moore, Jas. White, John H. Eaton, Wm. Pevler, J. E. Stroud, H. C. McDonald, Brad. Noffsinger, J. A. Stringer, J. R. Noffsinger, L. J. Stemsman, H. Riger, Wm. Stobough, D. J. Gish, R. W. Clark, Ad. Wilkins, John Sallee, Jacob Sallee, Aaron Vincent, Elijah Richy, Simon Miller, L. F. Vincent, R. Jarvis, D. J. Vincent, R. T. Eaton, Jas. Stobough, J. C. Vincent, L. E. Vincent, J. W. McElvain, L. E. Watkins, J. D. Edwards, J. H. Vincent, S. D. Kittenger, A. W. Pevlan, Press Richey, Davis Richey, Adam Stobough, J. T. Watkins, J. W. Markwell, E. C. Clark, L. H. Wright, J. W. Wilcox, Isaac Reid,
A. J. Reid, P. S. Noffsinger, A. Sallee, C. T. Underwood, P.
4 P. Vincent, Louis Stobough, W. T. Martin, J. W. Stersman, C. L. Watkins, J. S. Green, C. C. Locke, J. C. Hite, M. H. Capps, J. R. Lewis, John Danner, M. F. Watkins, J. W. Lewis, N. B. Boarde, M. J. Board, A. M. Capps, *Cr.*, David Board, E. D. Duvall, Rob't Vincent, Rich. Evitts, E. J. Anderson, L. O. Vincent, D. N. McRoy, J. C. Board, W. H. Martin, G. W. Martin, Ralph Uzell, Richard Stanley, W. C. Tison, L. C. Tison, John Tison, Alf. Stanly, Thos. Mercer, Ed. Bennett, James Benett, Jr., Philip McKinney, James Benett, *Cr.*, Bolus Tison, Benett Tison, P. D. Benett, R. J. Stovall, H. Forrester, S. B. Green, W. R. Wilson, M. Tison, W. E. Mathery, B. F. Haly, Wm. Haly, Sad Uzzell, A. D. Mathey, Gillis Tison, T. E. Tison, B. F. Williams, Wm. Stewart, Jas. Uzzell, I. J. Moore, John Bourland, Ben. Randolph, L. J. Oats, T. R. S. Moore, Adam Uzzell, W. E. Haley, Wm. Tyson, Dixon Garris, T. Forrester, Reason Cash, J. J. Moore, S. A. Stewart, W. S. Phillips, Scott Phillips, A. J. Whitmer, Jery Whitmer, W. D. Strader, J. C. Browning, D. R. Phillips, E. D. Phillips, Lewis Phillips, John Phillips, *Epbr.* Phillips, Vincent Browning, J. M. Whitmer, W. D. Moore, C. H. Shank, J. F. Whitmer, J. T. Browning, J. J. Whitmer, John Wright, G. W. Whitmer, J. E. Shank, J. W. Ward, C. L. Browning, G. W. Short, J. E. Shank, Jr., James Shank, J. N. Vincent, G. W. Phillips, Isaac Dunahoo, G. W. Whitmer, Isaac Whitmer, J. L. Whitmer, J. F. Rich, Lewis Hendricks, Wm. Hendricks, M. Shank, J. D. Ford, W. H. Haly, Geo. Vincent,
5 J. D. Gish, Baxter Jagoe, George Walcott, John Strother, Peter

Shaver, John Mason, Dan. Barneels, L. R. Slaton, Albin Slaton, Alf. Wallace, Wm. Bracher, John Bracher, Hugh Ferguson, C. C. Sharp, Jeff. More, Wm. Casebier, Ed. Casebier, R. T. Jones, J. L. Shutts, J. L. Page, J. C. Stersman, G. Glen, J. H. Adcock, Zack. Adcock, G. W. Stirdson, Henry Hoverton, Far. Mason, S. M. Rule, Jr., J. R. Watkins, J. W. Nickels, A. P. Fogle, J. F. Fogle, D. F. Fogle, C. Reid, Ben. Young, David Holland, J. F. Grog, J. S. Eads, J. A. Doss, J. W. Dukes, W. C. Jarvis, H. R. Eads, James Evitts, D. H. Whitehouse, D. H. Been, Wm. Doss, Jas. H. Doss, J. W. Fentress, C. W. Whitehouse, John Grady, Charles Nichols, Wm. Boland, John Vick, A. J. Capps, L. D. Morris, J. D. W. Fortney, John Everett, Jesse McCain, Wm. Bethel, C. Brannan, J. R. Harris, T. W. Jones, L. T. Coleman, J. T. Divine, John Stoball, Peter Baker, Jas. Butler, J. B. Cobb, John Harris, Jas. R. Harris, J. W. Newman, L. D. Vaught, E. L. Brawder, Edmond Faugh, L. C. Gish, L. Lacefield, R. Y. Thomas, Jr., S. D. Hill, W. H. Morris, L. M. Edwards, P. S. Lamb, John W. Doss, R. E. Humphrey, Jr., A. J. Ward, Thos. Ward, E. J. Walker, Thos. Gibbons, John Bethel, M. P. Creel, S. D. Humphrey, W. C. Stewart, N. Lewis, S. S. Divine, Wm. Galaway, P. W. James, Henry Ford, R. J. Walker,
J. W. Phillips, T. A. Haley, J. R. Wilcox, J. D. Rich, John
6 Ford, Elias Wilkins, D. G. W. Jones, W. H. Edwards, A. J.
Philips, O. Dorsett, B. N. Phillips, J. E. Stringer, Hugh Martin, D. W. Hendricks, S. J. Underwood, F. T. Hendricks, Wm. Lewis, Dan. Gisson, F. P. Browning, W. T. Underwood, W. C. Jones, Lewis Phillips, Wm. Martin, B. J. Humphrey, Joe Sterman, John Hilliard, J. S. Brown, Julius Tucker, C. M. Kertley, D. B. Noffsinger, L. A. Brown, Jas. Grady, J. L. Wilkins, Barney Wilkins, Thos. Whitmer, H. L. Patterson, J. B. Rhoads, J. E. Rhoads, Elijah Wilkins, Henry Christ, N. Harper, W. H. Divine, S. T. Hubbs, E. G. Divine, D. T. Hill, H. C. Downey, W. T. Shaver, Alf. Hopkins, R. N. Wiggins, Jesse H. Vincent, D. N. B. Turner, Jacob Tinple, A. W. Shaver, J. W. Gassett, Joe Lackey, W. A. Turner, W. J. Wilkins, Jr., David Gish, Jesse Milliard, Henry Pevlar, J. H. Vincent, Joe Gossett, Joe Reid, John Scott, Ben. Johns, Geo. France, J. A. Vincent, J. C. Kittenger, Jacob Gossett, S. D. Graves, C. C. Gossett, J. W. Wiggins, S. A. Shaven, J. W. Gish, W. T. Vincent, J. B. Kittinger, E. L. Miller, E. D. Fuller, N. T. Humphrey, H. C. Markwell, Wm. Rich, F. R. Gross, Wm. Wilkins, J. H. Noffsinger, W. H. Woodson, T. G. Woodson, S. D. Gish, D. W. Noffsinger, W. H. Overhutts, Jacob Gross, J. W. Coffman J. T. Scott, Lee Stewart, Lye Holland, James Sallee, F. M. Grundy, Thos. Moody, J. H. Stewart, L. B. Clark, D. H. Vincent, John H. Vincent, J. S. Whitmer, Jacob Hendricks, J. W. Turner, Robert Drake, W. H. Grundy,
Wm. Calbert, P. M. Calbert, Amos Richy, Alf Autte,
7 J. W. Danner, Isaac Reid, *Or.*, D. A. Whitmer, Jacob
Wright, Amos Wright, Jacob Hill, D. B. Humphrey, Dan. Gish, Jr., Netter Wilkins, John Danner, John Wilkins, D. W. Hopkins, J. L. Gross, J. L. Evans, J. E. Hendricks, J. D. Gish, Solomon Noffsinger, Wes. Scott, P. B. Richy, Alex. Scott, Dan.

Pevlan, E. J. Shaver, Elijah Wilkins, John Stobough, J. C. Markwell, J. D. Goodloe, B. H. Cosby, Rob't Hill, L. W. Vincent, R. K. Vincent, B. E. Gish, H. P. Vanoy, R. E. Whitmer, W. T. Miller, J. L. Gish, J. R. Wright, J. N. Gossett, Chas. Dunevan, A. B. Gross, E. W. Wright, R. S. Hickerson, T. M. Wright, John Kittinger, Jr., G. D. Kittinger, J. W. Wheeldon, John Wheeldon, Joe Wheeldon, Richard Curd, S. H. Curd, Geo. York, Reno Lovelan, Ellwood Fentrees, Wm. Hennan, Ira Kendall, Wm. Cassady, C. F. Tappan, C. H. Tappan, J. R. Wootson, V. B. Hewlett, J. W. Hewlett, B. S. Hewlett, J. L. Gish, C. L. McCown, A. M. Heny, J. L. Taylor, Laf. Bidwell, Jake N. Reid, Peter Bruce, A. C. Laffoon, R. E. Humphrey, L. J. Littlefield, Warren Marple, Wm. Walston, Green Walston, J. O. Everly, J. N. Moreman, J. M. Jackson, John Simms, Ab. Fentrees, Cay Ross, Harvey Clark, T. M. Baker, Alf. Wilson, Pink. Ross, Charles Carbon, Peter McConnell, Ed. Heck, Will Jackson, Ed. Carbon, Austin Wickliff, Silas Blacklock, Henry Blacklock, Alf. Long, Charles Wilson, Levi Nichols, W. C. Hackett, James Walcott, Charles Wolcot, R. W. Batsel, Geo. Purdy, W. F. Ward, J. H. Hughs, F. M.
8 McMullen, G. W. Hardison, John Hunt, Jerry Hunt, Jeff. Hunt, J. L. Anderson, Lot Hunt, John Fleming, J. M. Hope, Wm. Hughs, C. W. Cisney, James Corsey, J. W. King, D. J. Fleming, Newman Smith, A. J. Buckhannan, J. W. McPherson, John W. McPherson, Joe Fox, Wm. Hill, Rob't Bodine, Charles Whitehouse, Dan. Whitehouse, Wm. Whitehouse, J. T. Kimble, A. J. Deannond, Chas. Nichols, J. W. Coffman, G. B. Landran, G. W. Doss, John Eads, Dan. Hunt, J. M. Hope, J. W. Wood, J. H. Wood, Wm. Briggs, James Luby, J. H. Hunt, David Sumner, W. H. Simmons, Sam. Tuly, J. O. Corsy, J. H. Eads, J. T. Skipworth, Thos. Skipworth, Charles Bradley, Alf. Hope, Doc Hope, Matherly, J. W., Green Hunt, Dan. Sumner, Henry Nunan, Ben. Miller, C. H. Patterson, J. R. Childres, H. C. York, J. P. Schimmel, Jeff. Vau, Johnson Batsel, Jacob Wickliff, J. W. Newton, Chas. Arnold, Henry Bradley, & Memphis Coal & Mining Company

against

ALEXANDER TINSLEY, Sheriff of Muhlenburgh County, Ky.; J. H. Morton, County Judge of Same County; Martin Rittinger, William Young, Samuel Weir, William Whitaker, A. E. Newman, and J. E. Mills and Any Other Member of the Funding
9 Board; Robert Glenn, Holder of Original Bonds; George D. Park, Holder of Compromise Bonds, and All Holders of Bonds Issued to the Elizabethtown & Paducah Railroad Co.

The plaintiffs are tax-payers in the county of Muhlenburgh, in the State of Kentucky, and with insignificant exceptions wer- tax-payers in 1868 in said county. They are now but a small number of the tax-payers of the said county, who are associated together in a society or order known as the "United Order of Tax-payers of Muhlenburgh County, Ky.," which society or order is now about twelve hundred strong and increasing daily with rapid accessions. For themselves and the members of said order or society, as well as for and

on behalf of all other tax-payers in the said county of Muhlenburgh, and for the benefit likewise of said county, the plaintiffs make this their complaint in equity and ask relief, to wit:

They respectfully show unto this honorable court and make manifest as follows: That some time previous to the year 1868 the State of Kentucky assumed to create a corporation under the style and title of the Elizabethtown and Paducah Railroad Company. The act assuming to create the said corporation is found among the acts of the General Assembly of the State of Kentucky at session of ——, which act is referred to and asked to be considered as though
10 the same was set out in full in this pleading. Nothing is admitted as to said act adverse to the interest of plaintiffs, but all questions thereon are reserved.

Twenty-fourth of February, 1868, the General Assembly of the State of Kentucky passed an act, and the same was approved, which is entitled "And act to amend the charter of the Elizabethtown and Paducah Railroad Company." This act is bound in the published acts of the session of the said General Assembly, 1867–'8, commencing on page 622 and extending to page 633, partly inclusive of the latter. This act embraces forty sections and is exceedingly complicated, if not obscure. This act the plaintiffs refer to and that it be considered a part of this pleading as fully as though it had been set out herein. The first section of this act repeals "An act to amend an act incorporating the Elizabethtown and Paducah Railroad Company, approved March 9th, 1867." This latter act is asked to be considered as though the same — set out herein. It is submitted that this is a subject not embraced by the title of the said act of Feb'y 24, 1868, and is not expressed therein, the said title in nowise indicating that the repeal of any previous act was contemplated. Besides, it is submitted that the act repealed in nowise relates or is germane to the balance of this act immediately following the said first section. Hence plaintiffs insist that said
11 act of Feb'y 24th, 1868, is obnoxious to sect. 37 of article II of the constitution of the State. The second, third, and fourth sections of the said act provide that whenever the said Elizabethtown and Paducah Railroad Company shall request the county court of any county through or adjacent to which it was proposed to construct said road to subscribe, either absolutely or upon specified conditions, a specified amount to the capital stock of said company, the county court so requested should forthwith order an election to be held at the several voting places in said county on a day to be fixed by the court, not later than thirty days after the making of such order, and shall appoint judges and other officers to hold said election. It was further provided that the sheriff of such county should give notice to the officers appointed to hold said election in the same manner provided by the general law in other elections, and that the person acting as sheriff at the several precincts should return to the clerk of the county court within three days after the day of the election the poll books of their respective precincts, and the next day thereafter the county judge and county clerk should count the vote, and if it appeared the majority of those voting voted in favor of the sub-

scription of the stock as proposed the county judge should
12 order the vote to be entered on the record, and the subscription should be made by the clerk on behalf of the county on the terms specified in the order submitting the question to the vote under these — of the said act. The said Elizabethtown and Paducah Railroad Company, as appears on the records, a certified copy of which is made an exhibit to this pleading, marked Exhibit "A," applied to the then county judge of Muhlenburgh county, at what purported to be a called term of his court, on the fifteenth (15) day of May, 1868, and demanded that it should be submitted, in the manner prescribed by the said act, to a vote of Muhlenburgh county whether the said county would subscribe four hundred thousand dollars to the capital stock of the said railroad company, to be paid for on demand in the coupon bonds of said county of the denomination of one thousand dollars or one hundred dollars, as might be requested by the president and directors of the said railroad company, payable to bearer in thirty years from their date and bearing seven per cent. interest, payable semi-annually, *to* the city of New York, the subscription to be made on the condition that the said road shall be located and constructed through Muhlenburgh county and within one mile of the town of Greenville; and thereupon it further appears from the said record that on the motion of one
13 Thomas, who was president of the said railroad company, the county judge of Muhlenburgh county ordered as follows, to wit:

"That the question whether the court shall subscribe for and on behalf of Muhlenburgh county for four thousand shares (four hundred thousand dollars) of the capital stock of the said Elizabethtown & Paducah Railroad Company is hereby submitted to *the* a vote of the qualified voters of said county at an election to be held at the several voting places in said county on the 30th day of May, 1868, between the hours designated by law. It is further ordered that the clerk of this court prepare poll books for the several voting places, with two columns, one to be headed for the railroad subscription and the other against the railroad subscription. It is further ordered that the sheriff give notice at the several voting places at least 10 days before said election in the mode prescribed by advertisements posted at the court-house door and at the several voting places in said county."

The said county judge at the same time, as appears from said record, assumed the power to appoint, and did appoint, the officers to hold said election, and the said county judge and the clerk of the county court signed a certain certificate purporting to bear date the 3rd day of June, 1868, and which is in the following words & figures, to wit:

14 THE COMMONWEALTH OF KENTUCKY, }
Muhlenburgh County. }

"We, S. P. Love, judge of the county court of said county, and Thos. Bruce, clerk of said county court, duly authorized by an act entitled 'An act to amend the charter of the Elizabethtown & Pa-

ducah Railroad Company, approved Feb'y 24th, 1868,' to count the vote polled at elections held in the county under said act, do certify that at an election held in said county at the several precincts and places of voting therein on the 30th day of May, 1868, under an order of said court (meaning thereby the court of the county judge) submitting to the qualified voters of said — whether said court should for and on behalf of said county subscribe for four thousand shares (four hundred thousand dollars) of the capital stock of said Elizabethtown and Paducah Railroad Company upon the terms set forth in the order of submission aforesaid, upon due comparison and count the vote stood thus: For the railroad subscription, 771 votes; against the railroad subscription, 550 votes, and that a majority of all those voting at said election voted in favor of the subscription of stock as proposed.

"Witness my hand this 3rd day of June, 1868.

"S. P. LOVE,
"*County Judge.*
"THOS. BRUCE,
"*County Clerk.*"

Now, the truth is that the polls as well as the certificates
15 of the officers holding the election utterly failed to show that the question asked to be submitted by the said company to the county for an election or the question ordered to be submitted by the said county judge for an election was either submitted or voted on by anybody at the various precincts or voting places in the said county, and the certificate pretended to be executed by the said county judge and clerk was totally unauthorized by the returns made to them by the officers holding the election. The said returns and the polls of said election are by copy exhibited with this pleading and marked Exhibit "B" for the inspection of this honorable court. In this connection it is submitted as an inflexible rule in regard to popular elections generally, and especially as to such election as the one pretended to have been held under said act, that the poll as well as the certificate of the officer holding the election shall affirmatively show what the matter is that was the one voted on, and that the matters submitted or pending for choice by the people was voted on. If there be a failure in these particulars, then the poll cannot be counted, and for examining officers to count such defective polls is illegal and invalidates the return of the examining officer. It is further a fact that the notice the people of Muhlenburgh
16 county had of the said election was utterly inadequate for an intelligent apprehension of the act of February 24th, 1868, or for any possible knowledge of what it was their interest to do under said act. It may — positively asserted with truth & it is so alleged that fully one-third of the tax-payers of said county & the qualified voters thereof did not know of the election and had no information as to the question submitted. The said county is a large — territorially & one of the largest in geographical dimensions in the said Commonwealth, the said county being at its greatest length 30 miles and its greatest width 26 miles. Its popu-

lation is much scattered, and was in May, 1868, exceedingly difficult of access. The attention is further called to the numerous provisions of the act and their complexity. Before the act closes there is one short section that would easily escape the attention of a casual reader by which positive provision is made to sell out every county taking stock in the said railroad, and which was done a very short time afterwards when the said railroad company thought it had secured the county subscription. The vote of Muhlenburgh county at the time of the pretended submission of the question as to subscription of stock was over 220 qualified voters or nearly 2,300, whereas the vote reported as cast by the said county judge & clerk was 1,321,
a little over one half of the qualified vote of said county,
17 and of which 1,321 550 was reported as cast against the subscription, and thus allowing 771 votes, whether qualified or not, is unknown to burden the said county with a debt of four hundred thousand dollars ($400,000) & against 550 opposing votes and about 1,000 not cast. Can there be anything conceived more utterly unfair, unjust, and oppressive, especially when it is a fact that there was not one per cent. voting for subscription who were tax-payers to any considerable extent? It is respectfully submitted that it is no answer to this to say that they had a chance to vote and should have done so. It is confidently urged that they could have no chance to vote when the notice of the election and the time within which it was ordered was too short to furnish knowledge that an election was to be held, and especially too limited for the tax-payer to advise himself of the act or to take counsel as to his interests in the premises. The magistrate that hung his laws so high on the advertising pillar that his subjects could not read them, and therefore could not know what the law was, gave his people quite as good an opportunity to take care of their interests as the said company and the county judge to whom it addressed itself gave the people &
tax-payers of Muhlenburgh county. But the act itself is
18 plainly marked by a fraudulent purpose to surprise the people of the various counties into subscriptions to suit the pleasure of the said corporation. It deprives the people of the protection of the regularly appointed officers of elections under the general law and so enact as to have the opportunity of getting officers of election favorable to the railroad company and in their interests. The board to examine the returns is constituted differently from that provided by the general law with evidently the same end in view. To make the fraudulent purpose of the act more manifest, it will be observed that in the second section of the act providing for a subscription of stock by the county only thirty days at farthe*r*est are allowed within which the vote — to be taken, while in section 5 of the act for taking the vote for a subscription by a precinct, only a very small fragment of a county, it is provided that the election shall not be held under thirty days and may be extended to sixty days. Why this difference between a subscription of the whole county and a single precinct? Surely in the latter it would require less time to notify and put on their guard the voters than in the former. There is but one answer to this. The

company evidently consented on the advantage of a large number not voting in the county for want of sufficent notice of election to enable the voters to act—an advantage
19 which, it is seen, was obtained by the company in Muhlenburgh county. But in the matter of subscription by so small a division of the county as a precinct no calculation could be made on want of notice, and therefore the only chance of the corporation in the precinct was to have plenty of time to manipulate in the various ways by which a vote may be forced, bribed, or imported. Now, it is respectfully submitted that where the machinery for fraud was so elaborately and carefully provided for in the act, to believe for a moment that this machinery was not used for the object to which it was adapted would be a credul-ty far from creditable to the most ordinary intelligence. The plaintiffs charge that the whole election was a fraud. At the time of the said pretended election the number of voting precincts in the said county *were* six, and of these precincts there were but the two at Greenville at which any full vote was taken, and this was when the partizans of the said company were actual. The plaintiffs charge, on information and belief, that many votes were fraudulently taken at these voting places and many more returned who never voted. It is provided by the said act in sections heretofore named that the Elizabethtown & Paducah Railroad Com-
20 pany shall be exclusive judges as to the amount of subscription that shall be voted on in any county where, by the terms of the act, they may apply for the same. It matters not how large an amount they may ask for; it matters not how utterly inadequate the *the* property of the county may be to pay the said required subscription; it matters not how oppressive the said subscription might be to the tax-payers, yet the said act gives to said railroad corporation the power of subjecting the tax-payers to an imposition by a majority of votes that might amount to confiscation and absolutely deprive him of his property. Moreover, the act — no limitation or qualification for those voting, it being expressly provided in the act that a majority of those voting shall be sufficient to impose the burden by the terms of the act. Persons not residing in the county and have no interest therein and persons residing in the county & likewise having no right to vote might impose this burden, the effect of which could easily be the deprivation of the citizen of his property. It is respectfully submitted that the powers granted in the sections before mentioned are plainly in violation of section 2nd of the bill of rights, which forbids absolute and arbitrary power over the property of freeman, even to the largest majority. It like-
21 wise violates those constitutional provisions which prohibit from taking the property of a freeman without due course of law.

Farther, the provisions of the aforesaid sections of the said act is a suspension of the general law of the land, which is not within the power of the General Assembly of Kentucky. It is submitted that while the General Assembly has the power to do this it cannot be done for the benefit of an individual or a particular class. The suspension in this instance was for the benefit of a corporation, to wit,

the Elizabethtown & Paducah Railroad Company, but it is submitted that the county judge had no right under said act to have ordered or held the said election; that the county court mentioned in said act is not the quarterly court held by the county judge nor any other court held by him *atane*. The county court contemplated by the act and intended by the General Assembly is the genuine and real county court which convenes for the purpose of "laying the county levy, appropriating money, and transacting other financial business of the county." By section second of article 17, chapter 28, of the General Statutes it is expressly provided, If under the provisions of any law hereafter enacted it is required of the county court to submit to the qualified voters of the county or to the
22 qualified voters of any local community therein the proposition to take stock in any company or levy any tax other than for common-school purposes, or if under any law hereafter enacted it is required that the county court shall decide upon the issual of any bonds of the county or of any district or local community therein to any railroad or other company, it shall be the duty of the county judge to cause all the justices of the peace of such county to be summoned to attend at the term of the court at which any such action is proposed to be taken, who shall be associated with the county judge and constitute the county court for the occasion. A majority of all the justices of the peace of the county shall constitute a quorum for the transaction of business: Provided, that the provisions of this section shall not apply to any incorporated city or town which votes on such questions separately from the county in which it is located; and section 3rd, said chapter and article, provides: "The justices of the peace may be summoned by the county judge to attend any term of the court, and as many as attend upon such summons or at the regular court of claims and assist in transacting business in court shall be allowed three dollars each per day, to be paid out of the county levy. If a majority of the justices fail to attend the court of claims or any court
23 for which they have been summoned the court may be adjourned from day to day until a quorum is obtained, for which purpose attachments may be issued against those delinquent. Nothing can more plainly indicate the purpose and intent of the Legislature not to dispense with the presence of the magistrates necessary to constitute the fiscal county court when a proposition for subscription of stock in any company is made, or which more fully recognizes the necessity of the presence of the justices of the peace for the protection of the people, however peremptory may be the terms of the act enabling the corporation to apply for a subscription. It is, in fact, a legislative construction of the act in question and all similar acts, yet in the act itself upon its face abounds evidence that the legislative intent by the county court in the section before referred to the fiscal county court or court of claims. These sections, as well as section 7, draws the distinction between the duties to be performed by the county judge under the said act and what the county court is to do. The county court is to order the election, appoint the judges and other officers necessary to hold the election.

The county judge and the county clerk is constituted an examining board to compare returns and report upon the polls. In sec-
24 tion 7 the county court is to issue the bonds, while the county judge & county clerk are assigned merely clerical work of signing the bonds and the clerk the signing alone the coupons. Besides at this the said act provides for the submission of subscription to cities and towns, and expressly provides that the election shall be ordered, bonds issued, and the levy to pay interest and bonds by the fiscal body of the said cities and towns. Assigning to the mayor and clerk or auditor the same duties assigned to the county judge and county clerk, so, with the bonds of towns, the elections are to be ordered and the bonds to be issued by the fiscal bodies known as trustees, & the bonds to be signed by the president of the board of trustees and the town clerk in all particulars just as matters are directed by the said act as to the county judge and county clerk. Now, it is undisputed that the fiscal bodies of cities and towns under the said act could alone order the election and issue the bonds. This being so, there can be no reason for supposing that the Legislature intended to make any distinction between these municipal corporations and the counties, hence meaning that the fiscal bodies or agents of cities and towns sho-ld hold the election and issue the bonds. The Legislature me-nt that the fiscal agent of the county should do the same work. In section 9 it is the county
25 court that is directed to have levied and collected the tax, to pay interest, an- ultimately to liquidate the bonds. The county judge of Muhlenburgh county supposed he had authority to levy this tax, and did so for five years. It has, however, been long since abandoned as an usurpation, as it necessarily was, because the general law forbade the county judge from charging the county with more than fifty dollars for one object at a time or for more than one hundred dollars at any one term of his court. While the same general law confines the levying of taxes or appropriat*o*rs over the above amounts to the fiscal county court, composed of the justices of the peace, or a majority thereof, it has been decided by the United States circuit court for the State of Kentucky that the county judge cannot levy a tax to pay the interest or principal of the bonds issued by Muhlenburgh county for the pretended stock subscription. It is respectfully submitted that if the Legislature in sections 9 & 10 of said act meant by the use of the words "county court" the fiscal court or agent of the aforesaid county, composed of the justices of the peace, that it cannot be understood or construed to have meant otherwise when using precisely the same words in the sections relating to the ordering of the elections and issuing of the
26 bonds. Moreover, the Legislature has given a signal illustration of what it means when using the words county court in connection with financial or fiscal affairs long after dispute had arisen as to these very matters of construction. As to the said act the Legislature passed an act approved March, 1878, asked to be considered as though set out herein in full, in which it clearly takes the distinction between the county court and county judge in regard to financial affairs, showing that when fiscal matters of a county are

to be handled that it means by "county court" the fiscal court and not the county judge. This act is called the funding act, and r-lates to the bonds issued by Muhlenburgh county in payment of the pretended subscription of stock. The distinction and the intention of the Legislature adverted to above will be found in sections 7, 19, & 20 of said funding act. It is respectfully submitted that if the county court meant in the said act, as alleged, in the use of the term "county court" that they spoke in the same way and with the same intent & meaning in the use of the term county court in each and every section of the said act approved February 24th, 1868. An idea has prevailed, perhaps to some extent, that where the direction is peremptory to a county court and there is no room left for the exercise of discretion or judgment and the action of
27 the court is merely mechanical, then the county judge may perform the act, although it may be a fiscal act, without constituting the fiscal or court of claims. This is not well founded; yet if it were so it would be inapplicable to this case. The county court was, in the matter of ordering the election, charged with some of the highest duties in the way of discretion for the protection of the people; that was in the selection of the officers of s— election and fixing the time for holding the same. It was absolutely essential for the protection of the people that honest & intelligent officers should be selected for the holding of so important an election, upon the result of which so much depended. It was likewise most essential to the interest of the people that sufficient notice of the election should be given to inform the people of the whole county as to the same and to give them time for consultation & consideration. In this latter regard we have shown that the people were not protected. Whether they were protected in the former regard is doubtful. Certainly there was every temptation to appoint officers of election in the interest of the railroad. Again, the county court could have made constitutional objections to the act, and especially could the county court have objected to the large amount proposed to
28 be subscribed as converting taxation in confiscation, considering the assessable property of the county. One thing may be safely —, and the plaintiffs do now allege it—that is, if the county court proper or the court of claims had dealt with the proposition made by the railroad company there would have been no such subscription for Muhlenburgh county as four hundred thousand dollars. There still, however, remains a familiar rule of construction to fortify and establish a proper construction of this act to be beyond a preadventure, as plaintiffs conte-d. It is conceded in all courts that the Legislature is not to be considered as suspending the general laws of the land unless such intent plainly and beyond all controversy appears in the act and is explicitly expressed. It is respectfully submitted that it is impossible to judicially say that any such intent appears in the said act of February 24th, 1868, by which the Legislature abrogates in favor of said railroad company the functions of the court of claims—*i. e.*, county court—in dealing with its financial proposition for a subscription of stock to the said company. As before stated, if the Legislature had so intended

and expressed its intent ever so clearly, the supension of the general law was beyond its power, because its suspension was for the benefit of an individual, namely, the said rail-
29 road corporation. Hence, for these reasons, the election ordered by the county judge and held by the county judge was without authority & void, and the pretended subscription of stock of four hundred thousand dollars to the Elizabethtown and Paducah Railroad Company was *ultra vires*, and therefore void; and, further, that the issuance or issual of the bonds for such pretended subscription of stock in said railroad ordered and made by the said county judge and without the consent, knowledge, or presence of the court of claims or county court as fiscal agent of said county was without authority, and the said bonds so issued by the said county judge are void. For this conclusion the plaintiffs refer to the various proposition- heretofore submitted as to the elections for the pretended subscription. There is, however, this additional matter to be considered: The issuing of the bonds of the county in payment of the pretended subscription of stock was undeniably an attempt to charge the county with four hundred thousand dollars, and, if valid, was certainly a charge to that extent. The general law as effectually forbids the county judge to charge the county with any sum over $50.00 as it forbids him to levy taxes or to make appro-
priation or to attend to any financial matters, except to a
30 very limited extent, as before stated. If he cannot levy a tax which is generally conceded, he could not for the same reasons issue the bonds. Besides this, the act expressly points out and clearly provides the only connection he has with said bonds and what is precisely the same assigned to county court clerk; no more and no less. This duty is purely & mechanically clerical. The signature- of the county judge and county clerk are not even attesting. They have not the force and effect of a certificate as to anything that preceded it. They sign simply as a matter of convenience, as the court of claims or county court are too numerous to sign the bonds according to commercial usage. The validity of said bonds rests wholly on the order of the court issuing them and put on record, and that order could only have been by the county court—*i. e.*, the court of claims—after an election ordered and held by the same court. The order to issue the bond- was made by the county judge above without his constituting the county court authorizing the same and without conference or consultation with the justices of the peace of the said county; nor can it be said as to the act of issuing the bonds any more than it can of the act of ordering the election that the county court constituted of the justices would have been without power to exercise discretion and
31 judgment in the matter of the issuance of the bonds. It is true that it was the purpose doubtless of the said railroad company to destroy as far as could be done both the opportunity and power of the agents of the people in the various counties to interpose for their protection. The act is rank with every dishonest device to deceive, to hoodwink, surprise, and betray the people into a ruinous contribution to the said company, for it was more properly a

contribution than a subscription of stock. So far as the said company dared impose on legislative inadvertence to the disadvantage of the tax-payers it was done; but however skillful, however adroit the company was in this respect, yet the justices of the peace, if convened in court as they should have been and as has been shown was the legislative intent, they could have examined the return of the polls and gone behind the "returning board" composed of the county judge and the county clerk and refuse to issue the bonds on the ground that the question had not been properly submitted to the voters at the several polling places, and that a fair and full expression of the wishes of the people had not been obtained, and under the circumstances could not have been obtained. This course should have been taken by the agents of the people if actuated by
32 good faith toward them and if influenced by a desire to protect their interests. The plaintiffs allege that if the justices had been convened and the county court for claims had been constituted as the law required and as the Legislature intended the bonds of the county of Muhlenburgh would not have been issued on day such election as that pretended to have been had—on the 30 day of May, 1868. So it was, may it please this honorable court, by the most flagrant violation of law and contrary to the plain intent of the Legislature in the act of February 24th, 1868, bonds of the county of Muhlenburgh or obligations purporting to be such were issued to the amount of $400,000, a sum almost equal at that time to one-fourth of the accessible property values of the said county. The taxation for the payment of interest and the principle of these bonds when added to that for State, county, & school purposes aggregate a tax burden fully reaching that point long since fixed by political economists when taxation becomes confiscation. Now, this debt, if valid, has reached nearly the sum of eight hundred thousand dollars. This is a sum utterly beyond the capacity of the tax-payers of Muhlenburgh county to pay without impoverishing them and rendering them incapable of contributing effectively to the support of the Commonwealth and the local government of the county. Thus
33 the State and county are both injured and impaired in power and facility for the essential functions of government. In this way the maintenance of this pretended debt against Muhlenburgh county is utterly against public policy and strikes at the interest of the State. The assessable property values of Muhlenburgh county, when the pretended subscription and the pretended issue of bonds were made, was a little the rise of two and a half million. The assessable values of the said county are now a little the rise — two millions or two and not quite a half, including the railroad property in said county. It will be seen that the *assemble* values of the county *leave* not increased in the same ratio with the said pretended debt. It is submitted respectfully that there is a point at which the courts will not permit taxation in behalf of interests not pertaining to and not of governmental functions to interfere with the capacity or ability of the tax-payers to supply the taxes necessary to carry on and conduct the primary and & absolutely necessary work

of government. Moreover, to the issuance of the bonds the county court had the exercise of discretion as to the rate of interest as to the 9th section of the said act of February 24th, 1868, and all other sections of the said act relating to the levying and collecting of
34 taxes to pay the interest on the said pretended bonds and to pay the principal thereof. It is not necessary to enlarge. What has been heretofore submitted as to the other sections of the said act is equally applicable in the construction of the 9th section & other sections relating to the same subject-matter. Besides, it seems to be now conceded that "county court" in that section means the fiscal court or court of claims. This hon. court has decided that under that and other sections of the act relating to levying of taxes under the said act of February 24th, 1868, the county judge cannot make the levy. This either admits that the Legislature meant by county court in that section the court of claims or, if it did not so mean, there was no power in the General Assembly to vest any other than the court of claims with authority to levy taxes. The U. S. court for the district of Kentucky, as before stated, has also decided the same question in the same way that this hon. court has. Hence, for all the purposes of this suit, the plaintiffs assume that the construction and application of the said section relating to the levy of taxes *is* accepted. There is one provision in section 9 of said act to which the attention of this hon. court is called, and which is submitted to its consideration, as touching the unconstitutionality of the whole of the said act of February 24th, 1868. In the said section,
35 providing that the tax-payers shall not only pay the semi-annual interest on the bonds and the cost of collecting the tax for the same, it is further directed that he shall likewise pay additional interest on all the real estate and personal property in said county, including the amounts owned by residents of the county, which ought to be given in under the equalization laws." Now, it is submitted that this is holding the prompt tax-payer responsible for the default of another without consent on his part; that it is taking his property for the public use without compensation; that it is subjecting him to penalties without fault in him and without trial by his peers; that — is the infliction of a forfeiture without due course of law, and that in all regards it is a palpable violation of the constitution of the State as well as that of the U. S. For this feature of the act the whole act is unconstitutional and void. As to the funding act before referred to and heretofore asked to be considered as though set out in full, said act being entitled "An act to authorize & empower the county of Muhlenburgh to compromise and fund its outstanding bonded indebtedness, issue bonds, and levy and collect taxes to pay the same, it is submitted that said act is void for many reasons. The said act was not, as a matter
36 of fact, asked by the county of Muhlenburgh, but the same was obtained by the holders of the said pretended bonds issued in payment of the said pretended subscription or by a part of the said bondholders and solely in their interest and behalf. Though general in its terms, it was intended to apply alone to the said pretended bonds issued or pretended to be issued to the Eliza-

bethtown & Paducah road, and has been applied to none other. The holders of the said bonds had despaired in a fair contest in the courts to maintain the legality of the said bonds or to collect the same. They then conceived & perfected, as they thought, in the said funding act a compromise bond that would be free from the fatal vices and defects that inhered in the original bonds. They were not, however, satisfied with this unless they subjected — to methods for the satisfaction of the interest and principal of said bonds. The people of Muhlenburgh county — to methods totally different from those provided by the general law of the land. That the pl'ffs are not urgent in making this charge is evidenced by the fact that the defendant Morton, now county judge, who is attempting to enforce the said funding act, refused to recognise, when justice of the peace, the original bonds as legal or binding on the county; all of which appears from the record in Exhibit A set out to this pleading.

37 In fact and truth, the said funding act is characterized by all the obnoxious features of a force bill. It suspends the general law of the land as to the particular community of Muhlenburgh county, where there is no resistance to the process of the courts. It subjects them to taxation by agents unknown to the law of the land in the exercise of such powers. It deprives them of the protection of the judgment and discretion of those officers design-ed by the law of the land for the imposition of taxes. It distinguishes between the said county of Muhlenburgh and all other communities in all other counties in the State in the vital matter of taxation, and all this without any resistance to the ordinary processes of the law and without the presence of violence, rebellion, or war. It is respectfully submitted that it is beyond the power of the Legislature to pass an act marked by such odious & oppressive features. It is likewise unconstitutional because it blend- ministerial & executive with judicial functions. Again, if such an act is within the power of the Legislature, then that provision of the constitution which denies the existence anywhere in the State of absolute or arbitrary power to deprive the citizen of his property is a nul-ity. This act is just that exercise of absolute or arbitrary power to deprive the citizen of his property, contrary to or outside of the general

38 laws of the land, which that provision of the constitution was intended to inhibit.

The act likewise deprives the tax-payer of Muhlenburgh of his property without due course of law. It is idle to enumerate all the constitutional provisions which the said act violates. To do so would be to recite nearly every provision of the bill of rights and nearly every restraint in the constitution on legislative powers. It is likewise within the law of the Constitution of the United States. In this denouncing the said funding act the plaintiffs are not without high authority. Certain bondholders sought to have a bill reported by the Committee on Judiciary of the Senate of the United States taking away the right from the regular tax-levying authority whenever a judgment was obtained to the Federal courts by a bondholder, and to confer the power upon United States marshal. That distinguished lawyer, Judge Edmonds, who was

chairman of the Committee on Judiciary, would not entertain the bill for a moment, and condem-ed the same on the most peremptory terms as repugnant to every principle of court and constitutional law. Yet the Legislature in passing the said funding act did the very thing in principal and alalogy that this eminent jurist and statesman so emphatically condemns. So odious and arbitrary are the features of the said funding act that, though approved in 1878,
39 nothing was done towards the execution of said act of any moment from the date of its passage until the spring of the present year, 1885; that the first funding board was elected on the 4th day of May, 1878, whoes term was for one year, and various other boards were elected or appointed, and that nothing of consequence was done until the time before mentioned, when, as a revolt of their labors, there is now about the sum of $140,000.00 of the old bonds funded, for which new bonds are pretended to be issued by the said funding board to the amount of $115,000.00; not much margin or gain for the tax-payers in funding. Moreover, if the original bonds are valid, those under the funding act are without consideration.

The plaintiffs further submit respectfully to the honorable court that the said defendants, to wit, Martin Kittinger, Wm. Young, Samuel Weir, William Whitaker, A. E. Newman, & Z. E. Mills, citizens of said county, who constitute what is known as the funding board of Muhlenburgh county, together with the said defendant, J. H. Morton, county judge of said county, the president of said funding board, created by an act approved March 18th, 1878, and who are clothed with the power, by virtue of section 1st of said act, "to compromise and fund the outstanding indebtedness of said Muhlenburgh county and to redeem and cancel all bonds and unpaid coupons," *and* have proceeded to destroy and, in fact, hav
40 caused to be burned a part of the bonds to be compromised under said act, and in lieu of said destroyed bonds have issued new or compromise bonds, leaving the greater part of the indebtedness to be compromised under said act outstanding, in violation of the *time* meaning & intent of said act, which clearly means that all the indebtedness of the county shall have been compromised and funded into new bonds before the said compromise should take effect. The plaintiffs allege and charge that the said funding board has assumed the power to levy a tax to pay the interest due and to come due on the said compromise bonds, and that the said tax so levied by the said funding board is now about to be collected by the sheriff of said county. The plaintiffs charge that the said funding board has no authority to levy a tax for any purpose, and that the county judge has no power to levy a tax for the purpose named in said funding act, but that the sections of said act, to wit, sections 7 & 19, pretending to confer the taxing power upon the county judge alone, or, in case of his refusal to do so, on the circuit judge, as in section 20 of said act, are in conflict with the sections 5 & 6, art. 4, of the constitution, in this: that the evident purport and meaning of said funding act is to overthrow the county court & to usurp its power

and authority by creation of a new power called a "funding
41 board," upon which it undertakes to confer the duties and powers of the justices of the peace when constituting the county court, and who alone or a majority of them can exercise legally the right to levy taxes for county purposes, or to provide for the payment of the debts of the county, exceeding $50.00 in value, or to make appropr-ators of the public funds for public purposes. These plaintiffs charge that the funding act of March 18th, 1878, openly disregards the principle that taxation & representation shall go together, and seeke to force & coerce the free people of said county into the payment of an illegal & protended debt by agents and officers unknown to the constitution of the Commonwealth of Kentucky, & that to accomplish this purpose the general law of the State is invaded or suspended for the benefit of a particular class which *which* cannot constitutionally be done.

The plaintiffs, having made certain proceedings of the county judge in Exhibit "A" a part of this pleading, it is necessary to call the attention of the court to what purports to have occur-ed at a county court held on Monday, 30th day of August, 1869, where it will be found that certain magistrates are interlined as being present when the clerk of the court reported that he had made the subscription of stock to the Elizabethtown and Paducah Railroad
42 Company. Now, the truth is that said magistrates were not present or constituting the court when said report was made. The county judge was alone present at this time and alone holding court on that day. The names of the magistrates on the original record will be found to have been interlined after the minutes of the record had been written out and signed. It may not have been fraudulently intended, because, as plaintiffs are informed, *that* a cadet was to be elected to some military school by the county, and which election had to be made by the justices of the peace or magistrates, and, a majority of them happening to be at the county site on that day, they were called in at the instance of the friends of the applicant for appointment to the cadetship. So soon as the election was made the magistrates left the bench and the county judge proceeded with the subsequent business, as he had done with the business that proceeded it, by himself. The transcript here filed with the pleading does not show all the business done on that day; hence the necessity for this explination. Finally, on this point, the plaintiffs charge that there was no action on the part of the magistrates at this or any other time approving the said election, the results of the same, the issuing of the bonds, or the levying of taxes to pay interest thereon, nor was there any acquiescence by silence on the part of the magistrates as to any of these things,
43 and this whether or not the magistrates were at any time present when the county judge took steps in regard to the matters transacted under the said act of February 24th, 1868, and for this reason the county judge assumed that he alone had the power to act under the said act, and did in fact and truth execute all the provisions of said act without consultation with the said

magistrates and without their assent thereto. Hence the magistrates can only be considered as looking on, believing they had no authority and with which they had no right to interfere and to the exercise of which they had no right to make even a suggestion. When, however, they were applied to for action in regard to said bonds they at once refused to recognise the validity of said bonds or any of the transactions therewith, either preceding or succeeding the issual thereof, and, as the record plainly shows, moreover, it is submitted it was out of the power of the magistrates to validate the bonds issued by the county judge alone without previous directions by them. Now, the plaintiffs allege & charge that as to nearly every matter herein set out as effecting the validity of said bonds the public records accessable to the world showed the existence of the things that impaired and invalidated the said bonds. Every one who dealt in said bonds had the easy opportunity of inspecting
44 these records. Hence plaintiffs submit that there can be no innocent holder of any of these bonds, and that there is no legal right or superior equity in the holders of the said bonds that can be successfully interposed between them and the relief they seek. Therefore, in consideration of the premises, the plaintiffs ask the following relief: First, that the original bonds of Muhlenburgh county be declared invalid, and that all holders thereof be perpetually enjoined from collecting the principle thereof and the interest thereon—that is, the bonds issued to the Elizabethtown and Paducah Railroad Company; second, that like decree be made as to the bonds issued under the funding act aforesaid. As to these latter bonds plaintiffs ask for an immediate and provisional injunction or restraining order against the sheriff of Muhlenburgh county, who is made a defendant to this pleading, and also against the members of said funding board who are made parties defendant to this bill, and the other members of said board who are not made parties defendant by name, and the county judge, restraining them from collecting a tax which the said Morton, as county judge, has levied to pay the interest upon said bonds issued under the said funding act, which tax is now in the hands of the sheriff of said county to be immediately collected by him, for the plaintiffs show to this honorable court that the said tax has
45 been levied as above stated, and the sheriff is now instantly proceeding to collect the same, and will do so at once and before the plaintiffs can have a hearing of their cause unless the restraining order asked be at once granted, It has heretofore been brought to the attention of this honorable court the plaintiffs, as well as other tax-payers of said county, have paid taxes for 5 years illegally levied to pay the interest on the original bonds, which they can never recover even if the- succeed in their cause. They therefore naturally do not want to be subjected to a like experiment and the loss of illegal tax levies. This restraining order is earnestly needed at once, because the sheriff has already summoned the plaintiffs to pay the tax levied as aforesaid & threatens to coerce the same unless payment is made, which he will certainly do in the case of each one

of the plaintiffs and in the case of each and every tax-payer in said county; and the plaintiffs pray that said restraining order be extended so as to prevent the county judge from making any order or further levy to pay interest on bonds. The plaintiffs have associated with the defendants two bondholders, one holding an original bond or bonds and one holding a bond or bonds under the funding act. They do not know the other holders of the bonds and
46 therefore cannot give their names. They ask for such notice to be given to the unknown bondholders under the act of Feb'y 24th, 1868, and under the funding act of March, 1878, as may be within the jurisdiction of this hon. court. They ask for all proper process in this cause against the defendants, and on final hearing they pray for such relief, general & special, as they may be entitled to in the premises. This is the first application for an injunction or restraining order set forth in this pleading.

T. W. BROWN,
A. J. KELLAR,
Solicitors for Pl'ffs.

Affidavit of Pl'ff.

STATE OF KENTUCKY,
Muhlenburgh County, } *sct:*

I, JOHN KITTINGER, Jr., one of the pl'ffs in this cause, state- that the allegations of the foregoing petition so far as the same are made on his own knowledge are true, and so far as made from the information of others believes the same to be true.

July 22nd, 1885.

JOHN KITTINGER, JR.

Subscribed and sworn to before me by John Kittinger, Jr., July 22nd, 1885.

Q. B. COLEMAN.

Order of Cir. Judge Granting Injunction.

To the clerk of the Muhlenburgh circuit court:

On filing the petition hereto attached by R. W. Brown & others, plaintiffs, against Alexander Tinsley, sheriff of Muhlenburgh Co., J. H. Morton, Co. judge of said county, and others, in the
47 Muhlenburgh circuit court, and upon said plaintiffs executing bond, with good security, before the clerk of said Muhlenburgh circuit court, to be approved by him, in the sum of three thousand dollars to the defendants in said suit, condition- that said plaintiffs will pay said defendants and each of them the damage they or either of them may sustain by reason of this injunction if

same shall be adjudged to be wrongfully obtained, the clerk of said Muhlenburgh circuit court will therefore issue an injunction enjoining and restraining the said Alexander Tinsley, sheriff of said county, from proceeding, either by himself or his deputies, *from* collecting any and all taxes that may have been levied by the funding board of said county of Muhlenburgh for the purpose of paying the interest or principal upon any bonds issued by said funding board or by said county of Muhlenburgh, commonly called compromise bonds, issued in view of the indebtidness of said county of Muhlenburgh for her subscription of stock in the Elizabethtown & Paducah Railroad Company & other indebtidness of said county, said indebtidness being more particularly set up & described in said petition. Said clerk will also issue order enjoining and restraining said J. H. Morton, county judge of said county, and Martin Kittinger, William Young, Samuel Weir, William Whitaker, A.
48 E. Newman, and J. E. Mills, as members of the said funding board of said county, from making any other or further levy of taxes for the purposes aforesaid and as described in said petition until the same can be duly heard and decided in the Muhlenburgh circuit court.

Given under my hand, as judge of said Muhlenburgh circuit court, this July 23rd, 1885.

JOHN R. GRACE,
Judge Muhlenburgh Circuit Court.

On which petition and order of injunction was endorsed as follows, viz: Filed July 27th, 1885. Summons and ten copies issued. Injunction and 10 copies issued. Att.: Geo. W. Townes, clerk.

Muhlenburgh Circuit Court.

R. H. BROWN & Others, Plaintiffs,
against
ALEXANDER TINSLEY, Sheriff of Muhlenburgh County, Ky., and Others, Defendants. } Injunction Bond.

We undertake that the plaintiffs, R. H. Brown and others, whose names are set out in the caption of the above-entitled action, will pay to the defendants, Alexander Tinsley, sheriff of Muhlenburgh county, Ky., and J. H. Morton, county judge of the same county; Martin Kittinger, Wm. Young, Samuel Weir, William Whit-
49 aker, A. E. Newman, and J. E. Mills and any other members of the funding board; Robert Glenn, holder of original bonds, and George D. Park, holder of compromise bonds, and all holders of bonds issued to the Paducah & Elizabethtown Railroad Company and each of said defendants the damages, not exceeding three thousand dollars, that they or either of them may sustain by reason of

the order of injunction in this action if same shall be adjudged to be wrongfully obtained.

This 27th day July, 1885.

ANDREW NOFSINGER,
LOUIS JONES,
S. R. NOFSINGER,
C. M. SPARKS,
his
WILLIAM x WHITMER,
mark.
G. A. KILLINGER,
JACOB REED,
WILLIAM PEVLAR,
L. S. KITTINGER,
J. G. LOCKERY,
J. N. RHOADES,
J. L. GROVES,
J. T. GOSSETT,
WM. WELSH,
By J. T. GOSSETT,
JOSEPH WHITMER,
J. H. GRUNDY,
B. W. WOODBURN,
G. W. GISH,
G. G. GRUNDY,
E. P. RUST,
JOSEPH GOSSETT,
E. R. WEIR, JR.,
WM. S. HUMPHREY,
LEWIS PHILLIPS,
JACOB WILCOX,
J. B. SHAVER,
By GEO. W. TOWNES,
Att'y-in-Fact.

Attest: GEO. W. TOWNES, *Cl'k.*

Power Att'y to Sign Name.

This is to certify that I authorize J. T. Gossett to sign my name to the railroad injunction bond.

This July 27th, 1885.

WM. WELCH.

Power of Att'y to G. W. Townes, Cl'k, to Sign Name.

To G. W. Townes, clerk circuit court Muhlenburgh county:

I hereby authorize you to sign my name as surety to the
50 injunction bond in the action in said court of R. H. Brown, &c., *vs.* Alexander Tinsley, &c.

July 28th, 1885.

J. B. SHAVER.

Summons.

The Commonwealth of Kentucky to the coroner of Muhlenburgh county, Greeting:

You are commanded to summon Alexander Tinsley, sheriff of Muhlenburgh county, Ky.; J. H. Morton, county judge of same county; Martin Kittinger, William Young, Samuel Weir, Wm. Whitaker, A. E. Newman, J. E. Mills, & any other members of the funding board, and Robert Glenn, holder of original bonds, and George D. Park, holder of compromise bonds, and all holders of bonds issued to the Elizabethtown and Paducah Railroad Company to answer, on the first day of the next August term of the Muhlenburgh circuit court, a petition in equity filed against them in said court by R. H. Brown, W. A. Dukes, J. F. Morris, W. H. Morris, Andrew Walker, Sidney Gardner, Robert Lockett, Thos. Reynolds, W. E. Glenn, David Wakeland, J. W. Mores, T. W. Wood, W. O. Davis, Jas. Williams, S. L. Weaver, San Davis, C. A. Wickliffe, Cal. Hamilton, John Williams, S. N. Estes, A. M. Southard, Charles Dewberry, Albert Roark, Martin Miller, G. Grable, John Fluaden, Chas. Green, W. T. Davis, A. Y. Glenn, E. P. Tinsley, B. F. Tinsley, Charles Centers, W. H. Arnold, B. T. Casebier, B. Y. Casebier, J. D. Casebier, Moses Tinsley, John Bruce, Bart Flarity, R. Y. Harris, J. H.
51 Hunter, J. F. Jarvis, Gabriel Doss, J. F. Whitehouse, D. J. Jones, D. H. Whitehouse, James Rose, E. Bogwell, J. W. Noffsinger, R. T. Casebier, Mike Rose, G. B. Rose, Geo. Doss, W. P. Drake, G. O. Boothe, O. Radcock, T. Asesk, S. B. Drake, W. B. Doss, Wm. Drake, Charles Lewis, T. R. Hensley, Joel Doss, Cal. Carver, Lewis Carver, Jr., Thos. Carver, Rob't Gibbs, W. C. Gibbs, J. H. Smith, A. C. Rust, Joe Corsey, Geo. Corsey, Jno. Dreskell, Peter Williams, David Sweeney, Sam. Mitchell, John Horn, J. C. Davenport, Peter Revalett, John Harvey, Alf. Buchannan, W. F. Weatherford, Wesley Green, G. S. Ball, John Tuley, H. C. Mercer, J. R. Randolph, Rich. Stuart, Richard Chandler, Gus. Stovall, Alf. Miller, J. A. Forehand, W. T. McLevain, B. B. Johns, W. T. Vincent, Louis Stuart, W. S. Underwood, T. G. Bruce, P. M. Sparks, W. C. Stewart, J. T. Roark, John Woods, John Jagoe, Verg Jagoe, Dan. Ball, J. H. McLevain. W. B. Stewart, John Johnston, Lee Ezell, Jesse Mercer, C. W. Stovall, E. B. Stewart, J. W. Vincent, T. J. Hendricks, J. B. Forehand, T. B. Vincent, J. T. Mercer, J. T Wood, Jesse Roark, J. C. Caldwell, W. H. Buck, O. G. Mercer, G. M. Ball, T. B. Wilkins, T. M. Gossett, P. H. Stovall, C. F. Wetzkn, C. M. Lewis, T. J. Stovall, J. S. Hendricks, F. M. House, T. J. Jones, J. M. Forehand, D. C. Jones, Aaron Wickliffe, J. W. Sweeney, E. M. Underwood, A. J. Browning, R. C.
52 Underwood, J. W. Mercer, J. A. Stewart, James Corley, J. W. Gill, Rob't Stewart, J. N. Roark, Dan. Stewart, J. H. Myars, M. S. Kittinger, J. H. Vincent, O. E. Ball, Thos. Holey, Sam'l Wilkins, Bun Wilkins, Phill. Wilkins, Rob't Jarvis, W. Jarvis, Halleck Jarvis, R. E. Humphrey, L. J. Littlefield, Jerry Hunt, J. W. Wheeldon, John Wheeldon, John Danner, John Wilkins, J. J. Downey, J. R. Harris, Noah Gossett, James Gill, Geo. Haralson, Wm. Brown,

W. T. Gossett, J. W. McDonald, J. E. McDonald, J. H. Eades, J. B. Stone, T. J. Eades, Green Morris, Joe Cobb, W. W. Overhutts, L. E. Tucker, J. C. Cobb, J. E. Gill, Sam. McNary, John Moore, Dan. McNary, James McNary, Jesse Hays, Peter Moore, James White, John H. Eaton, Wm. Pevlen, J. E. Sturid, H. C. McDonald, Brod. Noffsinger J. O. Stringer, J. R. Noffsinger, L. J. Steorsm, H. Rigor, Wm. Stobough, D. J. Gish, H. M. Clark, Ad. Wilkins, Jno. Wilkins, John Sally, Jacob Sally, Aaron Vincent, Elijah Richy, Simon Miller, T. F. Vincent, R. Jarvis, D. J. Vincent, S. E. Vincent, J. W. McLevain, S. E. Watkins, D. J. Edmonds, J. H. Vincent, S. D. Kittinger, A. W. Pevlen, Press Richey, Davis Richey, Adam Strobough, J. T. Watkins, J. W. Markwell, E. C. Clark, L. H. Wright, J. W. Wilcox, Isaac Reed, A. J. Reed, P. S. Noffsingee, O. Sallee, C. S. Underwood, P. P. Vincent, Lewis Stobough, W. T. Martin, J. W. Stearsman, C. L. Watkins,
J. S. Green, C. C. Lock, J. C. Hite, M. H. Capps, J. R. Lewis, John
53 ——, M. F. Watkins, J. W. Lewis, W. B. Board, M. J. Board,
A. M. Copps, Doord Board, E. D. Duvall, Rob't Vincent, Rich. Evitts, E. J. Anderson, T. A. Vincent, D. M. McRay, J. G. Board, W. H. Martin, G. W. Martin, Ralph Uzzle, Rich. Stanley, W. C. Tyson, T. C. Tyson, John Tyson, Alf. Stanley, Thos. Mercer, Ed. Bennett, James Bennett, Jr., Phillip McKinney, James Bennet, Sr., Balus Tyson, Bennett Tyson, P. D. Bennett, R. J. Stovall, H. Forrester, S. B. Green, W. R. Wilson, M. Tyson, W. E. Watkins, R. F. Haley, Shad Uzzle, A. D. Watkins, Gillis Tyson, T. E. Tyson, B. F. Williams, Wm. Stewart, James Uzzle, I. J. Moore, John Bourland, Ben. Randolph, T. J. Oates, T. R. S. Moore, Adam Uzzle, W. E. Haley, Wm. Tyson, Dixon Gorris, T. Forrester, Reason Cash, J. J. Moore, S. A. Stewart, W. S. Phillips, Scott Phillips, A. J. Whitmer, Jerry Whitmer, W. D. Strader, J. C. Browning, D. B. Phillips, Louis Phillips, John Phillips, Ephriam Phillips, Vincent Browning, J. N. Whitmer, J. M. Whitmer, W. D. More, C. H. Shank, J. T. Whitmer, J. T. Browning, J. J. Whitmer, John Wright, G. W. Whitmer, J. E. Shank, J. W. Ward, C. L. Browning, G. W. Short, J. E. Shank, Jr., Jas. Shank, J. M. Vincent, G. W. Phillips, Isaac Donaho, G. W. Whitmer, Isaac Whitmer, J. L. Whitmer, J. F. Rich, Lewis Hendricks, M. Shank, J. D. Ford, W. H. Haley, Geo. Vincent, J. D. Gish, Baxter Jagoe, Geo. Wolcott, Jno. Strother, Peter Shaver, Jno.
54 Mason, Dan. Barnes, L. R. Slaton, Albin Slator, Alf. Wallace,
Wm. Bracher, Jno. Bracher, Hugh Ferguson, C. C. Sharp, Jeff. Moore, Wm. Casebier, R. T. Johns, J. L. Sheets, J. L. Page, J. C. Stenman, G. Glenn, J. H. Adcock, R. D. Beck, Jas. Adcock, Zach. Adcock, G. W. Stinson, Henry Howerton, Far. Mason, S. M. Rad, Jr., J. R. Watkins, J. W. Nickles, A. P. Fogle, J. F. Fogle, D. F. Fogle, C. Reed, Ben. Young, David Holland, J. F. Gray, J. S. Eades, J. A. Doss, J. W. Dukes, W. C. Jarvis, H. R. Eades, Jas. Evitts, D. H. Whitehouse, D. H. Bean, Wm. Doss, Jas. H. Doss, J. W. Fentress, C. W. Whitehouse, Jno. Graddy, Chas. Nicholls, Wm. Boland, Jno. Vick, A. J. Copps, T. D. Morris, J. D. W. Fertny, John Everett, Jesse McCain, Wm. Bethel, C. Brannon, T. J. Divine, Jno. Stoball, Peter Baker, James Butler, J. B. Cobb, John Harris, Jas. R. Harris, J. W. Newman, L. D. Vaught, E. L. Browder, Edmond

Faugh, S. C. Gish, S. Lacefula, R. Y. Thomas, Jr., S. T. Hill, W. H. Morris, L. M. Edwards, P. S. Lam, Jno. W. Doss, R. E. Humphrey, Jr., A. J. Ward, Thos. Ward, E. J. Walker, Thos. Gibbons, Jno. Bethel, M. P. Crue, T. D. Humphrey, W. G. Stewart, N. Siny, S. S. Devine, William Galloway, P. W. James, Henry Ford. R. J. Walker, J. W. Phillips, T. A. Haley, J. R. Wilcox, J. D. Rich, Jno. Ford, Elias Watkins, B. W. G. Jones, W. H. Edwards, A. J. Phillips, A. Phillips, B. N. Phillips, J. E. Stringer, Hughs Martin, B. W. Hendricks, S. J. Underwood, F. O. Hendricks, Win. Lewis,
Dan. Gissom, F. P. Downing, W. T. Underwood, W. C.
55 Jones, Louis Phillips, Wm. Martin, B. J. Humphrey, Joe
Stersman, John Millard, J. S. Brown, Julius Tucker, C. M. Kertley, D. B. Nofsinger, T. A. Brown, James Graddy, J. S. Wilkins, Barney Wilkins, Thos. Whitmer, H. L. Patterson, J. B. Rhoads, J. E. Rhoads, Elijah Wilkins, Henry Christ, N. Harper, W. H. Divine, S. T. Hubbs, E. G. Divine, B. T. Hill, H. C. Downey, Wm. Nofsinger, W. T. Shaver, Alf. Hopkins, R. N. Wiggins, Jesse H. Vincent, Dr. N. B. Forrest, Jacob Tinkle, A. W. Shaver, J. W. Gossett, Joe Lockery, W. A. Turner, W. J. Wilkins, David Gish, Jesse Millard, Henry Pevlar, J. H. Vincent, Joe Gossett, Joe Reed, Jno. Scott, Benj. Johns, Geo. France, J. A. Vincent, J. C. Kittinger, Jacob Gossett, S. D. Graves, C. C. Gossett, J. W. Wiggins, J. A. Shaver, J. W. Gish, J. T. Vincent, J. B. Kittinger, E. L. Miller, E. D. Fuller, N. T. Humphrey, H. C. Markwell, Wm. Rich, F. R. Gross, Wm. Wilkins, J. H. Nofsinger, W. B. Woodson, P. G. Woodson, S. D. Gish, D. W. Nofsinger, W. H. Overhutts, Jacob Gross, J. W. Coffman, J. T. Latt, Lee Stewart, Sye Holland, James Sallee, F. M. Gundy, Thomas Moody, J. H. Stewart, T. B. Clark, D. H. Vincent, Jno. H. Vincent, J. S. Whitmer, Jacob Hendricks, J. W. Turner, Rob't Drake, W. H. Grundy, Wm. Calvert, P. M. Calvert, Amos Ritchey, Alf. Autle, J. W. Danner, Isaac Reed, Sr., D. A. Whitmer, Jacob Wright, Amos
Wright, Jacob Hill, D. B. Humphrey, Dan. Gish, Jr., Netter
56 Wilkins, D. W. Hopkins, J. L. Gross, J. L. Evans, J. E. Hendricks, J. D. Gish, Solomon Nofsinger, West Scott, P. D. Richey, Alex. Scott, Dan. Pevlar, E. J. Shaver, Elijah Wilkins, John Stabaugh, J. C. Markwell, J. D. Goodloe, B. A. Cosby, Rob't Hill, T. W. Vincent R. K. Vincent, B. E. Gish, H. P. Vanoy, R. E. Whitmer, W. F. Miller, J. L. Gish, J. R. Wright, J. M. Gossett, Chas. Dunevan, A. B. Gross, E. W. Wright, R. S. Hickerson, T. M. Wright, Jno. Kittinger, Jr., G. D. Kittinger, Joe W. Wheldon, Richard Curd, S. H. Curd, Geo. York, Reno Lovelace, Elwood Fentress, Wm. Heman, Ira Kendad, Wm. Cassady, C. F. Tappan, C. H. Tappan, J. R. Whooton, N. B. Hewlett, J. W. Hewlett, B. S. Hewlett, J. L. Gish, C. L. McCown, A. M. Henry, J. L. Taylor, Lafe Bidwell, Jake N. Reed, Peter Bruce, A. C. Laffoon, Warren Marple, Green Walston, J. O. Everly, J. N. Moreman, J. M. Jackson, John Sims, Ab. Fentress, Coy Ross, Harvey Clark, T. M. Baker, Alf. Wilson, Pink Ross, Chas. Carbon, Peter McConnell, Ed. Heck, Will Jackson, Ed. Carbon, Austin Wickliffe, Silas Blacklock, Henry Blacklock, Alf. Long, Henry Charles Wilson, Levi Nicholls, W. C. Hackett, James Walcott, Charles Walcott, R. W. Botsell, George Purdy, W. F. Ward, J. H.

Hughes, F. M. McMullen, G. W. Hardison, John Hunt, Jeff. Hunt, J. L. Anderson, Lott Hunt, John Flemming, J. M. Hope, Wm. Hughes, C. W. Casney, James Casey, J. W. King, D. J. Fleming, Newman Smith, A. J. Buchannon, J. W. McPherson, Jno. W.
57 McPherson, Joe Fox, Wm. Hill, Rob't Bodim, Charles Whitehouse, Dan. Whitehouse, Wm. Whitehouse, J. T. Kimble, A. J. Dearmond, Chas. Nichols, J. W. Coffman, G. B. Laudnem, G. W. Doss, John Eades, Dan. Hunt, J. M. Hays, J. W. Wood, J. H. Wood, Wm. Briggs, James Tuley, J. H. Hunt, David Sumner, W. H. Simmons, Sam. Tuley, J. O. Comsey, J. H. Eades, J. T. Skipworth, Thos. Skipworth, Charles Bradley, Alf. Hope, Dock Hope, J. W. Warterly, Green Hunt, Dan. Sumner, Henry Newman, Ben. Miller, C. H. Patterson, J. R. Childers, J. W. Jones, H. C. York, J. P. Schrumnell, Jeff. Van Johnson Batsell, Jacob Wickliffe, J. W. Newton, Chas. Arnold, Henry Bradley, and the Memphis Coal & Mining Company, and warn them that upon their failure to answer the petition will be taken for confessed or they will be proceeded against for contempt; and you will make due return of this summons on the first day of the next August term of said court.

Given under my hand as clerk of said court this 27th day of July, 1885.

GEO. W. TOWNES, *Cl'k.*

On the back of the above summons was endorsed the following order of injunction, viz:

Order of Injunction Restraining Collection of Taxes.

R. H. BROWN, Plaintiff,
against
ALEXANDER TINSLEY, Sheriff of Muhlenburgh County, Ky., & Others, Defendants.
} Order of Injunction.

58 The defendant, Alexander Tinsley, sheriff of Muhlenburgh county, Ky., is, in pursuance of an order of injunction granted by the judge of the Muhlenburgh circuit — in the above-entitled action, enjoined and restrained, until the further orders of said court, from proceeding, by himself or by his deputies, to collect any and all taxes that may have been or may be levied by or under the authority of the funding board of Muhlenburgh county for the purpose of paying the interest or principal of any bond issued by said funding board or by said county, commonly called compromise bonds.

Given under my hand as clerk of said court this 27th day of July, 1885.

GEO. W. TOWNES, *Cl'k.*

Which summons and order of injunction were returned by the coroner endorsed as follows, viz:

Executed on Alexander Tinsley, sheriff of Muhlenburgh county, Ky., by delivering to him a copy of this summons and order of injunction endorsed thereon. This 30th day of July, 1885.

W. B. JAMES, *Cor. M. C.*

59 Page 1. EXHIBIT "B."

Poll book for an election held at South Carrollton, Muhlenburgh county, Kentucky, on Saturday, the 30th day of May, 1868.

	For R. R. subscription.	Against R. R. subscription.		For R. R. subscription.	Against R. R. subscription.
R. D. Reno		1	D. H. Baker		21
J. L. Groves		2	E. Whitmore		22
A. J. Whitmore		3	B. S. Hewlett		23
J. Kittinger		4	Rob't Stewart		24
J. F. Jones		5	C. T. Taylor		25
A. Bruce		6	F. D. Humphrey		26
C. W. Taylor		7	T. R. Clark		27
J. Crofford		8	E. Baker		28
E. K. Finch		9	Jno. Greggory		29
S. J. Rhoads		10	I. Kindle		30
J. K. Freeman		11	W. L. Foster		31
J. F. Thompson		12	Sam'l Henry		32
J. L. McCown		13	D. Gish		33
J. T. Gossett		14	Dan'l Pevelor		34
W. D. Lindsey		15	James Durham		35
J. V. Fentress		16	J. K. Sullivan		36
H. D. Rothrock		17	J. W. Laudrum		37
J. H. Harper		18	C. H. Tappan		38
C. W. Rothrock		19	M. C. Ford		39
E. Blacklock		20	W. C. Eades		40
60					
W. H. Walker		41	J. W. Wheeldon		61
J. R. Nichols		42	J. L. Townes		62
James Downey		43	Jesse Wealch		63
J. F. Lawton		44	A. F. Kitting		64
B. H. Pitt		45	W. R. Kittinger		65
J. W. Hendricks		46	T. E. Fulkerson		66
Benj. Miller		47	C. R. Lewis		67
Thomas Whitmore		48	D. L. Lewis		68
Stanley Singleton		49	Jacob Lands		69
D. D. Dunovan		50	P. Briscoe		70
E. F. Wiggins		51	J. S. Hill		71
H. Stobaugh		52	William Hodges		72
G. B. Kirtley		53	B. W. Woodburne		73
S. Danner		54	Jno. Danner		74
E. Richey		55	Dan'l France		75

Exhibit "B"—Continued.

	For R. R. subscription.	Against R. R. subscription.		For R. R. subscription.	Against R. R. subscription.
Rob't McIntire		56	J. B. Whitmore		76
Jno. Noffsinger		57	D. Holland		77
J. N. Read		58	J. H. Eades		78
J. Danner		59	W. B. Wickliffe		79
C. M. Kirtley		60	Jacob Read		80
61					
J. T. Humphrey		1	J. R. Gross		19
Isaac Rhead		2	J. M. Hopkins		20
Sol. Noffsinger		4	Amos Bennett		21
J. M. Vandiver		5	Jacob Gross		22
H. J. Gatton		6	W. P. Nicholls		23
Rob't Clark		7	C. B. Wickliffe	3	
Samuel Gossett	1		J. T. Cosby		24
Thos. H. Carter		8	Wm. Welch		25
James Marizy		9	Jut Stobaugh		26
C. F. Robertson		10	J. W. Hewlett		27
J. H. Vincent		11	F. M. Sharp		28
J. W. France		12	J. N. Rhoads		29
J. France		13	J. Ambroze		30
L. W. Kincheloe		14	H. T. Ambrose		31
J. C. Moorman		15	P. L. Townes		32
A. Grundy		16	W. I. H. Harris		33
Jos. Milligan	2		J. D. Harris		34
J. S. Kittinger		17	J. R. Wright		35
F. C. Grainger		18	Jesse Moore		36
S. M. Rhoad		3	L. W. Kincheloe, Jr.		37
62					
J. W. Danner		1	A. B. Stroud		19
Sam'l Rush		2	Jno. Brown		20
E. R. Heck	1		H. C. Day		21
H. Toolley		3	Jno. Brown, Jr.		22
R. Sullivan		4	Jacob Hendricks		23
D. T. Crumbacker		5	W. C. Day		24
D. D. Robertson		6	Greenwood Jones		25
T. A. Brown		7	S. M. Patterson		26
R. H. Jones		8	Joseph Nofsinger		27
E. E. Howerton	2		Jno. Lockery		28
F. Harris		9	W. Hart		29
E. Conoway		10	James Jarvis		30

Exhibit "B"—Continued.

	For R. R. subscription.	Against R. R. subscription.		For R. R. subscription.	Against R. R. subscription.
H. G. Bidwell		11	J. L. McIntire		31
Sam'l Ross		12	W. J. Wilkins		32
James Conoway		13	L. D. Fentress		33
A. H. Lovelace		14	H. H. Martin	3	
M. Watkins		15	Peter Shaver		34
A. Fentress		16	Jesse Wilkins		35
B. F. Stubbs		17	H. Groves		36
A. B. Gross		18	D. W. Eades		37
63					
J. K. Calvert		1	J. N. Robertson		19
C. L. McCown		2	J. Adcock		20
J. P. McIntire		3	C. C. Craig		21
D. A. Whitmore		4	Samuel Thompson		22
J. L. Noffsinger		5	Jno. Brinkman		23
Isaac Gossett		6	J. M. Shaver		24
W. T. Knight		7	S. H. Curd	3	
E. G. Peveler		8	W. T. Wiggins		25
J. W. Youtse	1		J. B. Millard		26
J. M. Youtse	2		J. N. Bell		27
James Tanner		9	B. T. Drake		28
Jno. Stobaugh		10	W. Anderson		29
Jesse Millard		11	Benj. Whitmore		30
H. N. Sharp		12	Wm. Nofsinger		31
J. A. ——		13	Jno. Davis		32
Jos. Gisish		14	C. B. Esdrex		33
J. Overhulse		15	Jas. Milligan	4	
James Duvall		16	L. McCown		35
J. M. Peay		17	W. Milligan	5	
L. Bidwell, Jr.		18	M. L. Ham	6	
64					
Samuel Sharp		1	J. T. Crawford		15
W. G. Pickett	1		W. P. Robertson		16
T. Devine	2		M. Kittinger		17
W. D. Fentress		2	John Sims		18
W. H. Young		3	J. M. Roark		19
S. C. Sharp	3		A. H. Kincheloe		20
T. Wakelin	4		Jno. B. Stewart		21
Jno. Stroud, Jr.		4	T. P. Martin	7	
D. W. Gundy		5	J. B. Frost		22

Exhibit "B"—Continued.

	For R. R. subscription.	Against R. R. subscription.		For R. R, subscription.	Against R. R. subscription.
S. O. Gundy		6	D. E. Spearion		23
A. V. Howerton	5		W. M. Nannie		24
J. C. Ham	6		W. Crawford		25
A. W. Garrett		7	S. T. Taylor		26
E. H. Kincheloe		8	G. W. Townse		27
A. Vaughan		9	D. P. Graddy		28
J. Bullock		10	Jno. Stroud		29
D. Dillman		11	E. C. Morris		30
B. F. Read		12	S. A. Griffith		31
B. J. Humphry		13	J. S. Bennett		32
E. Nall		14	Chas. Fentress		33
65					
J. Wright		1	E. Adcock	3	
J. H. Martin	1		Wm. Bowles		19
J. H. Lampkins		2	W. G. Martin		20
J. Land		3	J. R. Cundiff	4	
W. Rowlin		4	W. R. Crist		21
J. B. Howard		5	Wm. Ferhume		22
J. H. Gundy		6	B. W. Johns		23
W. H. Griffith		7	J. Gossett		24
E. Wilkins		8	J. Guliggins		25
H. Stewart		9	D. Guish		26
L. W. Griffith		10	E. Barklay		27
J. Hill		11	L. H. Martin		28
Chas. Watkins		12	R. F. Nall		29
N. J. Dennis		13	J. Nofsinger		30
T. H. Sisk		14	R. Drake		31
H. Evans		15	D. Richey		32
J. Noffsinger		16	J. W. Walcott		33
J. L. Taylor		17	A. G. Furgeson		34
L. Lockery		18	D. Eades		35
A. Adcock	2		L. C. Brinkman	5	
66					
S. C. Guish		1	J. P. Ward		21
C. Stone		2	J. B. Shaver		22
J. B. Hughes		3	Jas. W. Marple		23
R. C. Sharp		4	F. M. Whitmore		24
D. Bullock		5	W. Carnahand		25
Leven Watkins		6	S. I. Adams		26

Exhibit "B"—Continued.

	For R. R. subscription.	Against R. R. subscription.		For R. R. subscription.	Against R. R. subscription.
J. L. Guish		7	A. Malind	1	
L. Bidwell		8	A. Wallace		27
J. W. Sharp		9	T. Corn		28
L. R. Slaton		10	C. L. Morehead		29
I. D. Sharp		11	J. R. Stroud		30
J. K. Eaves		12	T. R. Reno		31
B. Calvert		13	J. N. Guish		32
B. Stewart		14	H. Clark		33
W. B. Doss		15	J. Pollock		34
W. Grundy		16	J. M. Sharp		35
William Gross		17	G. M. Kittinger		36
J. W. Calvert		18	J. G. Foulks		37
J. Hilliard		19	W. A. McCown		38
J. G. Knight		20			
67					
B. H. McCown		1	P. Morehead		21
Thos. D. Morris		2	T. R. Ferguson		22
L. J. Stearsman		3	Dan'l Stroud	1	
J. Graigeny		4	Jno. Woodbourn		23
J. H. Willis		5	J. Gossett		24
E. A. McLean		6	T. Ward		25
J. H. Panks		7	J. T. Morehead		26
Dan'l Watkins		8	M. Bales		27
Daniel Overhulse		9	P. Harper		28
J. Ross		10	J. Whitehouse	2	
T. I. Clark		11	R. W. McClean		29
Wm. Kittinger		12	G. R. McLean		30
T. Wilkins		13	James Nelson	3	
W. J. Wilson		14	A. W. Oats		31
W. C. Sharp		15	Jas. Adcock		32
Thos. Baxter		16	John Reno		33
Y. C. Dillman		17	W. F. Finch		34
Jesse Strowd		18	M. W. Gibbs		35
A. Clark		19	J. F. Whitehouse	4	
G. W. Divine		20			

M. W. GIBBS, *Cl'k.*

68 SOUTH CARROLLTON,
Muhlenburgh County, State of Kentucky.

The following votes were cast for and against the R. R. tax:

For R. R. tax, twenty-nine votes; against R. R. tax, three hundred & twenty-nine votes.

Given under our hands this 30th day of May, 1868.

JOSEPH ADCOCK,
JOHN REED, *Judges.*

M. W. GIBBS, *Clerk.*

STATE OF KENTUCKY,
Muhlenburgh County, } *sct:*

I, W. T. Stiles, clerk of the Muhlenburgh county court, certify that the foregoing is a true copy of the poll book of district No. 1 (South Carrollton) of an election held in said county on the 30th day of May, 1868, for the purpose of submitting to a vote of the qualified voters of said county the question whether the said county court shall subscribe for and in behalf of said county for $400,000 of the capital stock of the Elizabethtown and Paducah Railroad Company in the manner prescribed in a- act entitled "An act to amend the charter of the Elizabethtown and Paducah Railroad Company," approved February 24th, 1868.

Witness my hands as clerk of the county court aforesaid this 25th day of July, 1885.

W. T. STILES, *Cl'k,*
By W. R. EAVES, *D. C.*

Poll book for an election held at Boggess precinct, Muhlenburgh county, Ky., Saturday, the 30th day of May, 1868.

69

	For R. R. subscription.	Against R. R. subscription.		For R. R. subscription.	Against R. R. subscription.
Jno. E. Reno	1		John M. Manzy	16	
Lem'l Boggess	2		Henry Porter	17	
E. W. Martin	3		W. F. Mann	18	
S. R. McLean	4		C. C. Jenkins	19	
Thos. Bruce		1	A. Mann	20	
John Rothrock	5		T. R. Jernigan	21	
W. H. Yost	6		H. C. Manzy	22	
H. W. Jernigan	7		T. N. Mann	23	
L. R. Reno	8		Mansfield Rowe	24	
F. M. Allison	9		S. M. Paxton	25	
M. D. Hay	10		J. M. Williams	26	
H. B. Mann	11		John More	27	

	For R. R. subscription.	Against R. R. subscription.		For R. R. subscription.	Against R. R. subscription.
Jos. R. Martin	12		H. C. Bell	28	
S. H. Dempsey	13		Robert Glenn		6
John Harris		2	Ward McDonald	29	
Jos. Ricketts	14		Jas. Rose		7
T. A. Pittman	15		David Carter		8
W. Y. Cundiff		3	Authur Carter		9
A. J. Fortney		4	J. F. McDonald	30	
M. W. Cundiff		5	J. A. Cobb	31	
70					
Josiah Dukes		10	Jesse Bass	50	
Wiat Oates	32		H. L. Hays	51	
W. H. Agan	33		Peter Lamb, Jr.	52	
Jas. Manzy	34		J. P. Prouce	53	
S. P. Love	35		J. H. Hammond	54	
N. L. Adcock		11	James Hamond	55	
William Bethel	36		A. J. Spurlin	56	
Jacob Anthony	37		T. M. Ingram	57	
Stanford Lee	38		T. M. Wilcox		12
Jacob Embler	39		W. L. Caskey	58	
John Lee	40		Andrew McDonald	59	
R. P. Jenkins	41		J. A. Warner	60	
John Tuley	42		T. B. Anthony	61	
Pleasant Cobb	43		P. H. Baker	62	
W. E. Bridges	44		T. R. Gruhun	63	
W. H. Fortney	45		Solomon West	64	
A. B. Jenkins	46		G. W. Lee	65	
Peter Lamb	47		S. J. Miller	66	
John Vincent	48		L. A. Stokes	67	
E. S. Eades	49		John Carter	68	
71					
B. F. Lankford	69		W. D. Oates	88	
C. C. McDonald	70		P. M. Boggess	89	
W. M. Lovell	71		J. M. Oates	90	
W. C. McDonald	72		J. M. Roark	91	
G. W. McDonald	73		M. R. Mercer	92	
J. M. McDonald	74		Isaac Groves	93	
W. P. Hancock	75		David Groves	94	
W. H. Roark	76		William Bethel	95	
C. W. Lovelle	77		Pleasant Taylor	96	
David Thompson	78		M. F. Bethel	97	

	For R. R. subscription.	Against R. R. subscription.		For R. R. subscription.	Against R. R. subscription.
R. C. Underwood	79		Wm. Groves	98	
W. C. Adkins	80		S. H. Mercer	99	
Eli Fortner	81		Thos. Hunter	100	
J. J. Dukes, Sr.	82		S. M. Adkins	101	
Joseph Cobb	83		J. C. Howard	102	
W. H. Edward	84		Sam. McDonald	103	
William Eaves	85		J. W. Miller	104	
A. J. Doss		13	Franklin Brothers	105	
W. S. Hay	86		W. E. Brown	106	
William Harin	87		N. J. Harris	107	
72					
H. C. McCracken	108		Jas. Lewis	127	
R. W. Eades	109		Isaac Bard	128	
T. J. Walden		14	Thos. D. Board	129	
J. M. Putman	110		R. W. Lee	130	
J. H. Williams	111		G. W. Oates	131	
Isaac Jarvis	112		Samuel Eades	132	
Richard Foster	113		D. H. Whitehouse		15
Aron Wickliffe	114		H. H. Lucket		16
H. Tuder	115		John Kirkland	133	
J. J. Hancock	116		Andrew Glenn	134	
T. F. Glen	117		H. C. Bards	135	
L. F. Bard	118		J. M. Lile	136	
M. J. Lile	119		M. L. Pronce	137	
T. A. Lile	120		A. C. Coleman	138	
C. C. Martin	121		Beverly Coleman	139	
G. W. Vincent	122		H. H. Whitson	140	
L. B. Oates	123		J. A. Williams	141	
C. P. Climans	124		A. R. Wilcox	142	
W. A. Williams	125		Francis King	143	
N. J. Vincent	126		Granville Cauley	144	
73					
W. C. Shannon	145		B. T. Caseber	164	
J. C. Gibbs	146		J. S. Bradley	165	
L. B. Mann	147		W. T. Brown	166	
John Lovelle	148		B. Josey	167	
W. B. Terry	149		J. R. Depoister	168	
Juble Vincent	150		J. A. Stokes	169	
John B. Vincent	151		C. H. Stone	170	
J. M. Vick	152		William Wickliffe	171	

	For R. R. subscription.	Against R. R. subscription.		For R. R. subscription.	Against R. R. subscription.
Philip Cobb	153		E. S. Bradley	172	
Joseph Frailer	154		J. F. Baird	173	
J. D. Vick	155		Wm. Josey	174	
S. W. Bransford	156		J. C. Harison	175	
S. B. Lovelle	157		J. M. Vick	176	
B. Y. Caesler	158		T. A. Jackson	177	
G. S. Gibbs	159		J. D. Fulkerson	178	
J. M. Luckett		17	W. R. Boon	179	
R. D. Bordine	160		F. W. Williams	180	
Andrew Williams	161		R. C. Fraiser	181	
William Gill	162		Samuel Turner	182	
J. L. Vick	163		E. O. Pace	183	
74					
T. H. Morris	184		W. W. Hancock	202	
M. C. James	185		W. L. Dukes	203	
G. D. Morris	186		A. S. McLean	204	
Isaac Morris	187		F. M. McDonald	205	
Jas. Cauley	188		T. T. Walton	206	
C. C. Oates	189		G. W. McDonald	207	
T. J. Moseley	190		J. R. McDonald	208	
J. S. Miller	191		T. J. Green	209	
W. W. McCrackin	192		T. G. Terry	210	
E. B. Sanford	193		W. R. Murdock	211	
W. M. Hancock	194		A. W. Martin	212	
John Yeargin	195		J. W. McDonald	213	
T. C. Withers	196		John Duvall	214	
G. M. Bibb	197		W. P. Jernigan	215	
D. W. Jernigan	198		J. H. Hays	216	
M. D. Miller	199		R. W. Browning	217	
W. J. Green		19	T. R. Pittman	218	
Henry Rhoades	200		S. C. Harlson	219	
W. H. Wilcox		18	J. T. Shelton		20
R. D. Hancock	201		M. G. Rhoads	220	
75					
J. G. W. Fortner	221		J. S. Adkinson	240	
J. W. Eades	222		J. H. Bethel	241	
N. R. Mathis	223		J. F. Jernigan	242	
T. R. Walton	224		E. G. Oates	243	
Nathaniel Eades	225		J. P. Williams	244	
B. J. Shaver	226		A. H. Williams	245	

	For R. R. subscription.	Against R. R. subscription.		For R. R. subscription.	Against R. R. subscription.
R. M. Cessna	227		Jno. R. Ritcherson	246	
J. F. Mitchell	228		J. F. Day	247	
Marion Embler	229		W. L. Oldham	248	
R. L. Eades	230		W. P. Barbee	249	
A. H. Sanford	231		J. M. Evitts	250	
T. J. Richerson	232		Jackson Lovelace	251	
W. M. Tyson	233		B. T. Mathis	252	
J. H. Morton	234		W. P. Richardson	253	
S. D. McNury	235		F. M. Vincent	254	
W. W. Mann	236		Thos. C. Jones	255	
K. L. Terry	237		Robert Williams	256	
Thos. Stone	238		G. D. Park		22
R. D. Tuder	239		William Morris	257	
D. H. Myers		21	J. W. Mathis	258	
76					
D. E. T. Drake		23	Jas. H. Rice	272	
J. R. Eades	259		John Bransford	273	
Sam'l Wetherford	260		J. C. Hight	274	
L. P. Jernigan	261		T. J. Burney	275	
R. H. Boggess	262		S. C. Vick	276	
S. E. Rice	263		W. W. Lewis	277	
J. T. Quisenberry	264		J. T. M. Brown	278	
L. W. W. Vick	265		T. E. Mann	279	
Samuel Tanner	266		A. M. Terry	280	
Luther Bard	267		E. T. Roark	281	
P. H. Martin	268		W. E. Mabley		24
R. A. Boyd	269		W. W. Martin	282	
W. H. Rice	270		Thos. J. Eades	283	
G. W. Richardson	271				

THOS. J. EADES, *Cl'k.*

STATE OF KENTUCKY, }
Muhlenburgh County. }

We, W. W. Martin & W. E. Mobley, judges of — at Boggess precinct, Muhlenburgh county, on Saturday, May 30th, 1868, certify that the number of votes cast for the Elizabethtown & Paducah
77 R. R. at said precinct amounts to 283; against it, 24, said vote being upon the proposition to vote or not a tax for four hundred thousand — for building of said road.

Given under our hands this 30th day of May, 1868.

W. W. MARTIN &
W. E. MOBLEY, *Judges.*

THOS. J. EADES, *Clerk.*

STATE OF KENTUCKY, } *sct:*
Muhlenburgh County, }

I, W. T. Stiles, clerk of the county court of said county, certify that the foregoing is a true copy of the poll book of district 2 (Boggess precinct) of an election held in said county on the 30th day of May, 1868, for the purpose of submitting to a vote of the qualified voters of said county the question whether the said county court of said county shall subscribe for and on behalf of said county for $400,000 of the capital stock of the Elizabethtown & Paducah Railroad Company in the manner prescribed in an act entitled "An act to amend the charter of the Elizabethtown and Paducah Railroad Company," approved February 24th, 1868.

Witness my hand as clerk of the county court aforesaid this 25th day of July, 1885.

W. T. STILES, *C'k,*
By W. R. EAVES, *D. C.*

78 Poll book for an election held at the court-house precinct, Muhlenburgh county, Kentucky, on Saturday, the 30th day of May, 1868.

	For R. R. subscription.	Against R. R. subscription.		For R. R. subscription.	Against R. R. subscription.
E. M. Brank	1		A. L. Goad	21	
D. A. Martin	2		W. S. Coleman	22	
J. A. Campbell	3		Alfred Turner	23	
F. B. Hancock	4		W. T. Parham	24	
E. R. Weir	5		Jas. D. Youts	25	
S. E. Smith	6		Charles Crabtree	26	
W. B. Neel	7		Joseph Paxton	27	
L. C. Chatham	8		John W. Jackson	28	
Thos. J. Tinsley	9		Jas. M. Dennis	29	
Thos. Morgan	10		J. H. Reno	30	
Nathan Meyer	11		Johnathan Short	31	
G. B. Eades	12		Wm. C. Hodge	32	
Alexander Farris	13		Lewis H. Dwyer	33	
John Roark, Sr.	14		J. H. Hodge	34	
M. H. Marshall	15		Joseph N. Paxton	35	
John McIntire	16		Jas. J. Tate	36	

	For R. R. subscription.	Against R. R. subscription.		For R. R. subscription.	Against R. R. subscription.
Abraham Dennis	17		John F. Jenkins	37	
B. E. Pittman	18		Jas. T. Jernigan	88	
M. C. Hay	19		John A. Weatherford	39	
E. R. Weir, Jr.	20		A. A. Newman	40	
79					
Jas. W. Cary	41		S. S. Merritt	61	
J. H. C. Leigh	42		W. A. Dukes	62	
W. H. Wilkerson	43		Green Wilkerson	63	
G. L. Metzker	44		Wm. C. Martin	64	
Jas. W. Poag	45		Edmund Drake, Jr.	65	
John A. Allison	46		S. D. Chatham	66	
W. B. Davis	47		John Wells	67	
R. T. Martin	48		W. N. Tate	68	
James Durham	49		Wm. Heltsley	69	
Thos. H. Martin	50		Wm. B. Hale	70	
J. P. Wells	51		W. G. Wells	71	
J. J. Cundiff	52		S. H. Jackson	72	
W. H. James	53		Alfred Robertson	73	
Lewis Eades	54		O. V. Talbert	74	
David Brothers	55		Alfred Johnston	75	
Jas. H. Wright	56		Wm. Greenwood	76	
John B. Staples	57		H. H. Robertson	77	
Wm. Vine	58		Bryant S. Middleton	78	
Wm. R. Cary	59		P. H. Rutlege	79	
Jesse J. Pearson	60		Rich. Turner	80	
80					
Jacob A. Cobb	1		Chas. W. McLean	21	
Wm. E. Corley	2		Burgess Swinney	22	
Thos. J. Wells	3		John W. Guynn	23	
Louis Johnston	4		Silas Drake	24	
E. B. Dukes	5		John H. Underwood	25	
A. M. Wells	6		John Johnston	26	
John P. Stewart	7		Isaac W. Walker	27	
Wyatt W. Johnston	8		Geo. S. Langley	28	
J. E. Atkinson	9		W. W. Casebier	29	
Francis Brothers	10		G. L. Craig	30	
Isaac Farris	11		Wm. Buckhannon	31	

	For R. R. subscription.	Against R. R. subscription.		For R. R. subscription.	Against R. R. subscription.
J. C. Garrett	12		R. B. Tate	32	
Jno. M. Jones	13		J. J. Gray	33	
James M. Jones	14		John J. Smith	34	
Jas. Duvall	15		W. H. C. Tate	35	
Reddick Duvall	16		John Johnston	36	
M. C. Wells	17		W. C. Jackson	37	
W. G. Jones	18		Wm. Slaughter	38	
Josiah Dukes	19		Josiah C. Johnston	39	
J. H. Heltsley	20		Wesley Johnson	40	
81					
J. B. Blackwell	41		Perry Hill	61	
J. W. Templeton	42		J. M. Shutt	62	
J. P. Underwood	43		Elijah Dukes	63	
John G. Gray	44		Wm. D. Robertson	64	
Henry Shutt	45		Joseph C. Dukes	65	
Thos. Jenkins	46		T. M. Tinsley	66	
Jacob Johnson	47		J. W. Dukes	67	
Green R. Hancock	48		Amos M. Jenkins	68	
Jasper N. Juies	49		W. J. Jenkins	69	
W. J. Carver	50		W. G. Lee	70	
John F. Dukes	51		W. S. Venable	71	
Andr. Harris	52		G. R. Craig	72	
Johy Y. Dukes	53		A. W. Cook	73	
J. W. Rice	54		T. B. Smith	74	
F. G. Diskill	55		John Campbell	75	
J. W. Cook	56		Jacob J. Wells	76	
Hutson Driskill	57		J. W. Johnston	77	
M. G. Heltsley	58		W. L. S. Wells	78	
Joseph Gates	59		John Shutt	79	
A. M. Underwood	60		H. F. Tucker	80	
82					
Russell A. Williams	1		A. G. Rice	21	
Thos. H. Reynolds	2		Riley Shutt	22	
R. B. Johnston	3		Fredrick Unsell	23	
F. S. Cary	4		Wm. B. James	24	
Green B. Rice	5		B. R. Johnston	25	
Jonathan Shutt	6		S. E. Cary	26	
Chas. Kirtley	7		W. M. Wyatt	27	
W. R. Shutt	8		W. H. Hughes	28	

	For R. R. subscription.	Against R. R. subscription.		For R. R. subscription.	Against R. R. subscription.
W. H. Uttey	9		R. H. Robertson	29	
E. W. Dukes	10		B. F. Reynolds	30	
Gideon Edwards	11		John Jeffies	31	
J. S. Gray	12		John Jenkins	32	
Joseph J. Wells	13		L. H. Jenkins	33	
Augustus Lewis	14		Washington Jenkins	34	
Jacob Groves	15		Wm. D. Estes	35	
Thos. J. Rice	16		W. H. Metzker	36	
Lewis E. Campbell	17		Thos. Humphrey	37	
Chas. Metzker	18		Needham Wyatt	38	
Thos. Lovell	19		C. W. Wyatt	39	
W. M. Langley	20		Ben. Vincent	40	
83					
G. H. Leigh	41		J. S. Beasley	61	
Wm. Y. Newman	42		J. C. Johnston	62	
Wm. L. Richardson	43		Wm. Bell	63	
G. W. Blackwell	44		Hugh Edwards	64	
Ben. G. Jernigan	45		S. F. Gray	65	
Dr. A. M. McConn	46		Jno. E. Robertson	66	
A. J. Lyon	47		Hury W. Hughes	67	
R. M. Crittenden	48		A. J. Swinney	68	
David H. Martin	49		M. H. Cook	69	
Joseph F. Langley	50		Henry H. Johnston	70	
M. L. Cary	51		David M. Durham	71	
Jesse W. Smith	52		Levi Shutt	72	
Jesse B. Taggart	53		Alfred Y. Johnston	73	
Lewis McConn	54		W. B. Allen	74	
J. W. Dukes	55		T. C. Newman	75	
Thos. J. Shelton	56		E. G. Mercer	76	
A. A. Johnston	57		James A. Allen	77	
Seth Beasley	58		T. H. Johnston	78	
Lewy Cundiff	59		W. S. Johnston	79	
Richard Guyn	60		J. Laban Ford	80	
84					
P. G. Dockuis	1		Wm. Powell		
Felix B. Rice	2		L. W. Powell		
Jas. W. Rowe	3		W. D. Shelton		

	For R. R. subscription.	Against R. R. subscription.		For R. R. subscription.	Against R. R. subscription.
Wm. P. Evans	4		E. L. Cook		
W. D. Pannell	5		Finis M. Latham		
B. H. Jernigan	6		Henry Saddler		
Jesse Rice	7		J. A. Paskill		
Chas. Bivins	8		B. C. Davis		
W. L. Wells	9		M. N. Roark		
James F. Wells	10		M. N. Hudson		
John A. Hodge	11		Jas. D. Craig		
E. J. Hudson	12		P. H. Calvert		
A. M. Dennis	13		Calvin McLellan	Left blank.	
J. M. Drake	14		James M. Taggart		
H. N. Martin	15		P. B. Covington		
L. E. Williams	16		M. M. Jernigan		
I. G. Jackson	17		John W. Sherrod		
G. R. Walker	18		J. W. Hancock		
L. F. Shelton	19		W. B. Taggart		
Wm. D. Jackson	20		Howard Duvall		
85					
Jas. McCown	41		N. S. Roark	50	
Thomas C. Robertson	42		M. J. Roark	51	
Jerry T. Langley	43		F. M. Rice	52	
Jno. E. Smith	44		Thos. J. Jones	53	
John W. Covington	45		E. J. Neel	54	
W. M. Tucker	46		Jno. L. Williams	55	
John S. Lucus	47		Wm. Irvin		1
J. B. Buckhannon	48		T. H. Jernigan	56	
J. G. Ellison	49		J. M. Edwards	57	

STATE OF KENTUCKY, *Muhlenburgh County*, } *sct:*

We, E. G. Ueel and John L. Williams, do certify that at an election held at the court-house, in Greenville, Muhlenburgh county, Ky., on Saturday, the 30th day of May, 1868, on the question whether or not the county court of said county shall subscribe — & on behalf of said county for $400,000 of the capital stock of the Elizabethtown & Paducah Railroad Company, at the close of the polls the vote stood thus: For the railroad subscription, 279 votes; against railroad subscription, 1 vote; all of which votes were

86 6—158

taken at the court-house aforesaid and within the hours prescribed by law.

Given under our hands this 30th day of May, 1868.

E. G. UEEL,
J. L. WILLIAMS, *Judges.*

STATE OF KENTUCKY, }
County of Muhlenburgh, } *sct:*

I, W. T. Stiles, clerk of the county court of said county, certify that the foregoing is a true copy of the poll book of district No. 3 (court-house precinct) of an election held in said county on the 30th day of May, 1868, for the purpose of submitting to a vote of the qualified voters of said county the question whether the said county court of said county shall subscribe for and on behalf of said county for $400,000 of the capital stock of the Elizabethtown and Paducah Railroad Company in the manner prescribed in an act entitled "An act to amend the charter of the Elizabethtown & Paducah Railroad Company," approved February 24th, 1868.

Witness my hand as clerk of the county court aforesaid this 25th day of July, 1885.

W. T. STILES, *Clk,*
By W. R. EAVES, *D. C.*

87 Poll book for an election held at Paradise precinct, Muhlenburgh county, Kentucky, on Saturday, the 30th day of May, 1868.

	For R. R. subscription.	Against R. R. subscription.		For R. R. subscription.	Against R. R. subscription.
Joseph Fox	------	1	S. P. Myers	19	
T. B. Young	1		P. R. Williams	20	
Jacob Gish	2		G. W. Haden	21	
S. A. Jackson	3		Gilbert Muir	22	
E. E. C. Shull	------	2	James Stewart	23	
J. M. Williams	4		T. P. Bougers	------	3
W. H. Ham	5		Thomas Sumner	24	
D. J. Everett	6		Pressley Smith	25	
Tolbert Robertson	7		Peter Shull	------	4
Moses Smith	8		B. W. Rhoads	26	
Jesse Wallace	9		T. H. King	------	5
F. W. Jackson	10		F. W. Pendleton	27	
J. S. Young	11		A. J. Rhoads	28	
G. V. Glenn	12		W. R. Welburn	29	
William Hill	13		Isaac Roll	30	

	For R. R. subscription.	Against R. R. subscription.		For R. R. subscription.	Against R. R. subscription.
D. E. Rhoads	14		J. M. Benton	31	
Pressley Wood	15		Thomas Hill	32	
Thomas Gibbons	16		T. J. Engler		6
J. W. Griffith	17		S. W. Roll	33	
E. P. Rust	18		Jas. W. Lankford	34	
88					
D. W. Graves	35		J. H. Smith	49	
J. W. Green	36		William Baker	50	
J. E. Jackson		7	John Pidcock	51	
E. L. Youts		8	S. B. Shamwell	52	
E. B. Padcock	37		B. R. Welburn	53	
G. V. Rhoads	38		E. F. Smith		13
James Tigert	39		W. H. Mattingly		14
M. H. Roll	40		E. P. James	54	
W. N. Smith		9	F. M. Weburn	55	
I. J. Roll	41		Levy Williams		15
J. C. Rhoads	42		A. G. Glenn	56	
G. S. Ball		10	J. C. Thompson	57	
W. B. Smith		11	G. B. Vaught	58	
J. W. Reid	43		Joseph Basden	59	
Francis Tall	44		Greenberry Roll		16
R. M. Tinsley		12	L. A. Ricketts		17
M. A. Sumner	45		W. H. Smith	60	
George Richardson	46		O. C. Vaulandingham	61	
G. C. Carr	47		M. H. Vaught	62	
Wm. Keith	48		J. W. Rickets	63	
89					
A. L. Depoister		18	Charlie Lee	74	
Alney Unsell	64		Charles Saile	75	
A. T. Rose		19	Henry King	76	
C. W. Brooks		20	W. L. Grable	77	
W. A. Thompson	65		R. M. Knight	78	
P. L. Howerton		21	L. C. Welburn	79	
W. T. Smith		22	Wm. Galaway	80	
Leonard Smith		23	W. T. Bell	81	
D. J. Rhoads	66		M. H. Christian	82	
John Buskill	67		Sam'l Weir	83	
W. B. Depoister	68		W. C. Hobbs	84	
E. B. Welburn	69		David Duncan	85	

	For R. R. subscription.	Against R. R. subscription.		For R. R. subscription.	Against R. R. subscription.
T. M. Dobbs	70		S. L. James	86	
B. F. Kimmel		24	H. H. Dennis	87	
W. E. Hughes	71		Jarred Wallace	88	
Q. P. Smith	72		D. B. Roll		25
J. G. Depoister	73				

H. H. DENNIS, *Cl'k.*

90 We do certify that the foregoing election was conducted according to law May 30th, 1868.

D. B. ROLL,
JARRED WALLACE, *Judges.*
S. L. JAMES, *Sheriff.*

H. H. DENNIS, *Cl'k.*

STATE OF KENTUCKY, *Muhlenburgh County,* } *sct:*

I, W. T. Stiles, clerk of the county court of said county, certify that the foregoing is a true copy of the poll book for district No. 4 (Paradise precinct) of an election held in said county on the 30th day of *March*, 1868, for the purpose of submitting to a vote of the qualified voters of said county the question whether the county court of said county shall subscribe for and on behalf of said county for $400,000 of the capital stock of the Elizabethtown & Paducah Railroad Company in the manner prescribed in an act entitled "An act to amend the charter of the Elizabethtown & Paducah Railroad Company," approved February 24th, 1868.

Given under my hand as clerk of the county court aforesaid this 25th July, 1885.

W. T. STILES, *Cl'k,*
By W. R. EAVES, *D. C.*

Poll book for an election held at Myers precinct, Muhlenburgh county, Kentucky, on Saturday, the 30th day of May, 1868.

91	For R. R. subscription.	Against R. R. subscription.		For R. R. subscription.	Against R. R. subscription.
B. F. Blackford	------	1	J. M. Blain	19	
J. F. Castleberry	18		W. H. Whitaker	20	
B. O. F. Masters	1		H. Y. Wood	21	
W. M. Blackwell	2		S. T. Davenport	22	
J. C. Travis	3		G. M. Welburn	23	
Wm. Ford	4		R. P. Acock	24	
Pleasant Ford	5		Wm. Swinney	25	
S. Cooksey	6		J. F. Posey	26	
T. R. Taggart	7		W. A. Mohon	27	
J. W. Moor	8		J. R. Coursey	28	
J. B. Tolbert	9		A. M. Tolbert, Jr.	29	
J. L. Wood	10		D. L. Tolbert	30	
Lott Hunt	------	2	Wm. Staples	31	
L. J. Vickers	11		A. M. Tolbert, Sr.	32	
J. N. Ford	12		Thomas Posey	33	
David Strader	13		A. Posey	34	
Obedia Strader	14		S. W. Skipworth	35	
Henry Uncle	15		Samuel Raney	36	
J. L. Anderson	16		T. H. Palmer	------	3
S. C. Strader	17		J. W. Welburn	37	
92					
R. L. Ramsey	38		Lewis Jones	47	
G. W. Hardison	39		Martin Blain	48	
Sam. Venable	------	4	W. T. Posey	49	
W. H. Welborn	40		T. Halder	50	
J. R. Armstrong	41		Y. H. Vickers	51	
W. B. Whitaker	42		H. G. Newman	52	
George Patton	43		S. J. Hunt	53	
William Cox	44		Lott Peurrd	54	
M. B. Clark	45		Henry Posey	55	
G. W. Short	46		Sam, Turner	56	

SAMUEL TURNER, *Cl'k.*

This is to certify that at an election held at Myers Mills on the 30th day of *March*, 1868, for railroad subscription to aid in building a railroad from Elizabethtown to Paducah, Kentucky, — received the following votes:

For subscription, 56 votes.
Against " 4 votes.

H. G. NEWMAN,
S. J. HUNT, *Judges.*
LOTT PENROD, *Sheriff.*
SAM'L TURNER, *Cl'k.*

93 STATE OF KENTUCKY, } *sct:*
Muhlenburgh County, }

I, W. T. Stiles, clerk of the county court aforesaid of said county, certify that the foregoing is a true copy of the poll book of district No. 5 (Myers precinct) of an election held in said county on the 30th day of May, 1868, for the purpose of submitting to a vote of the qualified voters of said county the question whether the county court of said county shall subscribe for and on behalf of said county for $400,000 of the capital stock of the Elizabethtown & Paducah Railroad Company in the manner prescribed in an act entitled "An act to amend the charter of the Elizabethtown & Paducah Railroad Company," approved February 24th, 1868.

Given under my hand as clerk of the county court aforesaid this 25th day of July, 1885.

W. T. STILES, *Cl'k,*
By W. R. EAVES, *D. C.*

Poll book for an election held at Summers precinct, Muhlenburgh Co., Ky., on Saturday, the 30th day of May, 1868.

94	For R. R. subscription.	Against R. R. subscription.		For R. R. subscription.	Against R. R. subscription.
Joseph Gossett	------	1	Ovis Hickerson	------	21
James Browning	------	2	John F. Martin	------	22
Philip Phillips	------	3	George Harper	------	23
Joseph S. Whitmer	------	4	Wm. S. McNary	------	24
John M. Gish	------	5	C. B. Edmunds	------	25
Jas. L. Wilkins	------	6	James G. Durham	------	26
William Hendricks	------	7	Lewis Phillips, Jr.	------	27
Wm. Short	------	8	Absolom Whitmer	------	28
Julius Tucker	------	9	Anderson F. Miller	------	29
George W. Gish	------	10	Henry Reynolds	------	30
Jacob Phillips	------	11	Wm. M. Moore	------	31
Calob Browning	------	12	J. F. Rich	------	32
Thos. M. Wright	------	13	Jas. F. Moore	------	33

	For R. R. subscription.	Against R. R. subscription.		For R. R. subscription.	Against R. R. subscription.
Edward E. Vincent		14	Wm. M. Lewis		34
Thomas Gossett		15	Wm. Whitmer		35
James H. Vincent		16	Johnathan Whitmer		36
John Shank, Sr.		17	John W. Whitmer		37
John Shank, Jr.		18	Wm. C. Turner		38
Jacob Phillips, Jr.		19	Richard Stewart		39
Samuel Short		20	Wm. T. McElvain		40
95					
Geo. W. Eaves, Sr.	1		William C. Browning		57
David Clark	2		John J. Whitmer		58
Thos. M. Morgan	3		James Tyson	5	
Morris Moore	4		Alexander Sparks		59
Wm. A. Wright		41	James Sparks		60
A. J. Vincent		42	D. C. Peters		61
Jno. S. Vincent		43	F. M. Browning		62
Jas. W. Vincent		44	Wm. T. Vincent		63
H. W. McNary		45	James Uzzle		64
Isaac Miller		46	Benjamin Gish		65
Thos. D. Forehand		47	A. H. Briles		66
Wm. Wilkins		48	Essex Miller		67
Robert T. Vincent		49	Willis B. Stewart		68
Robert Reynolds		50	Wiley Roberts		69
A. J. Browning		51	Wm. S. Humphrey		70
Andrew Phillips		52	Bradford Nofsinger		71
R. O. G. Walker		53	Andrew Nofsinger		72
J. M. D. Martin		54	Daniel B. Miller		73
Wilson C. Turner		55	Wm. T. Miller		74
Jacob McNary		56	Charles Vincent		75
96					
John L. Vincent		76	Daniel Stewart		94
James Stobaugh		77	Wm. Stobaugh		95
Peter S. Nofsinger		78	Wm. Underwood		96
Orien Wilkins		79	Charles Carnes		97
Joseph P. Hendricks		80	John Warner		98

	For R. R. subscription.	Against R. R. subscription.		For R. R. subscription.	Against R. R. subscription.
William W. Wilkins, Sr.		81	Walter Sparks		99
S. T. Ingram	6		Thomas Morgan, Sr.		100
J. H. Moore		82	Granville Stewart		101
J. J. Humphrey		83	Kinion Harper		102
J. H. R. McIlvain		84	J. W. Crumbaker		103
Michael Shank		85	E. Bennett		104
J. B. Whitmer		86	Samuel Coombs		105
Ivy Stewart		87	John Wilkins		106
Thos. Hobbs		88	Richard B. Summers		107
Samuel B. Stewart		89	Wm. Bruce		108
Zachariah Stovall		90	James Nofsinger		109
W. G. Minton	7		Wm. A. Armstrong		110
Jeremiah Whitmer		91	John Champlin		111
John Wright		92	Samuel Nofsinger		112
Charles M. Spark		93	Catton Woods		113
97					
Alfred Miller		114	Samuel Wearle		133
Wm. G. Whitmer		115	Wm. Bennett		134
Ivy Miller		116	John Shank, Jr.		135
John Morgan		117	William Jagoe		136
Lewis Phillips		118	F. M. Jones		137
Charles Morgan		119	John M. Harper		138
Isaac Donahoe		120	Hooper Markwell		139
G. W. Whitmer		121	Thos. Haley		140
James Forehand	8		J. W. Warner		141
Green P. Turner		122	Henry Hall		142
Jacob Whitmer		123	Joseph Whitmer		143
Joseph Nofsinger		124	Jas. N. Ward		144
Jesse Moore		125	David Jones		145
Samuel Whitmore		126	John Markwell		146
J. F. Richardson		127	Samuel Whitmer		147
John W. Lewis		128	Elisha Whitmer		148
Albert Young		129	Jas. W. Uzzle, Jr.		149
Michael Phillips		130	A. E. Ball, Jr.		150
John Phillips		131	George R. Markwell		151
Wm. J. Williams		132	James Bruce		152

	For R. R. subscription.	Against R. R. subscription.		For R. R. subscription.	Against R. R. subscription.
98					
Geo. W. Eaves, Sr.	------	153	C. T. Martin	15	
A. D. Randolph	9		Thos. T. Martin	------	160
Joseph T. Martin	------	154	Thos. J. Stoval	16	
Wm. J. Uzzle	------	155	Jno. D. McNary	------	161
W. H. Martin	------	156	M. Horn	------	162
Felix J. Martin	------	157	C. M. Lewis	------	163
A. J. Reed	------	158	Jas. Bennett	17	
Edward Bennett	10		Jno. B. Hays	------	164
Thos. Mercer	11		Thos. M. Uzzle	------	165
Jeff. D. Miller	12		Isaac Miller	------	166
Isaac Miller	------	159	Thomas C. Summers	------	167
Philip D. Benett	13		J. R. Roark	18	
Adam Shank	14				

At an election held at Earle's P. O. for issuing bonds for $400,000 the following vote was polled: For the tax, 18 votes; against the tax, 167 votes.

Given under our hands May 30th, 1868.

ISAAC MILLER,
S. M. EATON, *Judges.*

JNO. ROARK, *Cl'k.*

99 STATE OF KENTUCKY, *Muhlenburgh County,* } *sct:*

I, W. T. Stiles, clerk of the county court of said county, certify that the foregoing is a true copy of the poll book of district No. 6 (Summers precinct) of an election held in said county on the 30th day of May, 1868, for the purpose of submitting to a vote of the qualified voters of said county the question whether the said county court of said county shall subscribe for and on behalf of said county for $400,000 of the capital stock of the Elizabethtown & Paducah Railroad Company in the manner prescribed in an act entitled "An act to amend the charter of the Elizabethtown & Paducah Railroad Company," approved February 24th, 1868.

W. T. STILES, *Cl'k,*
By W. R. EAVES, *D. C.*

Endorsed by cl'k, February: Filed August 22nd, 1885. Att.: Geo. W. Townes, cl'k.

Exhibit "A," referred to and made part of plaintiffs' petition, is in words and figures as follows, viz:

STATE OF KENTUCKY:

Muhlenburgh County Court.

MAY 15TH, 1868.

100 At a call court began and held for Muhlenburgh county, at the court-house, in Greenville, Ky., on Friday, the 15 day of May, 1868.

Present: S. P. Love, P. J.

At a meeting of the board of directors of the Elizabethtown and Paducah Railroad Company, held on the 10th day of March, 1868, at the house of the Hon. James Guthrie, in the city of Louisville, the following resolutions were adopted:

Resolved, That the county court of Muhlenburgh county be, and is hereby, requested to submit to a vote of the qualified voters of said county, in the manner prescribed in an act entitled An act to amend the charter of the Elizabethtown and Paducah Railroad Company, approved February 24th, 1868, the question whether said court shall subscribe for and on behalf of said county four hundred thousand dollars of the capital stock of said Elizabethtown and Paducah Railroad Company, to be paid for on demand in the coupon bonds of said county of the denomination of one thousand or one hundred dollars, as may be requested by *by* the president and directors, payable

101 to bearer in twenty years from their date, in the city of New York, bearing seven (7) per cent. interest, payable semi-annually in the city of New York, said subscription to be made upon the condition that said Elizabethtown and Paducah Railroad Company should locate and construct its road through Muhlenburgh county and within one mile of the town of Greenville; 2, that the president be requested to deliver a copy of these resolutions to the county judge of Muhlenburgh county.

SAM'L B. THOMAS,
Pres. Elizabethtown & Paducah Railroad Company.

A. A. GORDON, *Sec't'y.*
May 15, 1868.

This day Samuel B. Thomas, president of the Elizabethtown and — railroad, appeared in court and presented resolutions adopted by the board of directors of said company, which read as follows, viz:

Resolved, That the county court of Muhlenburgh county be, and it is hereby, requested to submit to a vote of the qualified voters of said county, in the manner prescribed in an act entitled An act to amend the charter of the Elizabethtown and Paducah

102 Railroad Company, approved Feb'y 24, 1868, the question whether said court shall subscribe for and on behalf of said county four hundred thousand dollars of the capital stock of said Elizabethtown and Paducah Railroad Company, to be paid for on demand in the coupon bonds of said county of the denomination of

of one thousand dollars or one hundred dollars, as may be requested by the president and directors, payable to bearer in twenty years from their date in the city of New York, and bearing seven (7) per cent. interest, payable semi-annually in the city of New York, said subscription to be made upon the condition that said Elizabethtown and Paducah Railroad Company shall locate and construct its road through Muhlenburgh county and within one mile of the town of Greenville; 2, that the president be requested to deliver a copy of these resolutions to the county judge of Muhlenburgh county. On motion of said Thomas, it is ordered that the question whether the court shall subscribe for and on behalf of Muhlenburgh county for four hundred thousand dollars of the capital stock of said Elizabethtown and Paducah Railroad Company his hereby submitted to a vote of the qualified voters of Muhlenburgh county at an election to be
103 held at the several voting places in said county on the 30th day of May, 1868, between the hours designated by law. It is further ordered that the clerk of the court prepare poll books for the several voting places, with two columns, one to be headed for the railroad subscription, and the other against the railroad subscription.

It is further ordered that the sheriff give notice at the several voting places, at least 10 days before said election, in the mode prescribed by advertisements posted at the court-house door and other several voting places in said county.

Ordered that the following-named persons be, and they are hereby, appointed officers of election for Muhlenburgh county at the approaching election in May, 1868: To district No. 1, South Carrollton, Joseph Adcock and John Rud, judges; W. F. Finch, sheriff; M. W. Gibbs, clerk. To district No. 2, Boggess precinct, John Williams and W. W. Martin, judges; John R. Reno, sheriff; J. Eaves, cl'k. To district No. 3, Court-House precinct, E. G. Neel and W. R. Cory, judges; Wm. Irvin, sh.; T. J. Jones, clerk. To district No. 4, Paradise precinct, D. B. Rau & J. J. Wood, judges; Wm. Hin, sheriff; H. H. Dennis, cl'k. To district No. 6, Summers precinct, S. M. Eaton, Isaac Miller, judges; John Cory, sheriff; J. R. Roark,
104 clerk.

At a call county court held in and for the county of Muhlenburgh, at the court-house, in Greenville, on Wednesday, the 3 day of June, 1868.

Present: S. P. Love, county judge.

The judge of this court produced a certificate of the vote of the qualified voters of the county of Muhlenburgh at an election held in said county on the 30 day of May, 1868, at the several precincts and voting places therein, upon the question, submitted by this court, on the motion of Sam'l Thomas, president of the Elizabethtown and Paducah Railroad Company, and the resolution of the board of directors of said road filed by him, and by an order made on the 15th day of May, 1868, whether this court shall, for and on behalf of Muhlenburgh county, subscribe for four thousand shares, four hundred thousand dollars, of the capital stock of said Elizabethtown

and Paducah Railroad Company on the terms and conditions set forth in said order, which certificate and vote are ordered to be entered on the records, and are in the words and figures following:

THE COMMONWEALTH OF KENTUCKY, *Muhlenburgh County,* } *sct:*

We, S. P. Love, judge of the county court of said county, and Thos. Bruce, clerk of said county court, duly authorized by
105 an act entitled An act to amend the charter of the Elizabethtown and Paducah Railroad Company, approved Feb'y 24, 1868, to count the vote polled at elections held in the county under said act, do certify that at an election held in said county, at the several precincts and places of voting therein, on the 30th day of May, 1868, under an order of said court submitting to the qualified voters of said county whether said court should, for and on behalf of said county, subscribe for four thousand shares, four hundred thousand dollars, of the capital stock of said Elizabethtown and Paducah Railroad Company upon the terms set forth in the order of submission aforesaid, upon due comparison and count the vote stood thus: For the railroad subscription, 771 votes; against the railroad subscription, 550 votes, and that a majority of *on* those voting at said election voted in favor of the subscription of stock as proposed.

Witness our hands this 3rd day of June, 1868.

S. P. LOVE,
County Judge.
THOS. BRUCE,
County Cl'k.

And it appearing that notice of said election had been duly given by the sheriff at the several voting places, and that the said election had been held and conducted in every respect in the manner
106 prescribed in the act entitled An act to amend the charter of the Elizabethtown and Paducah Railroad Company, approved February 24th, 1868, and in accordance with the requirements of the order aforesaid; and it further appearing from the vote aforesaid that a majority of *an* those voting at said election voted in favor of the subscription of stock as proposed, it is now ordered that the subscription of four thousand shares (four hundred thousand dollars) of the capital stock of the said Elizabethtown and Paducah Railroad Company be made by the clerk of this court for and on behalf of the county of Muhlenburgh upon the condition that said Elizabethtown and Paducah Railroad Company shall locate and construct its road through Muhlenburgh county and within one mile of the town of Greenville.

Court met pursuant to adjournment Dec'r 1st, 1868.

Present: S. P. Love, P. J., & Esqrs. Joseph Adcock, D. B. Rau, J. H. Morton, T. R. Clark, J. B. Hendricks, E. G. Nul, J. J. Wood, W. R. Cory, H. G. Newman, John M. Williams, S. M. Eaton, & S. J. Hunt.

Ordered that S. P. Love be, and he is hereby, appointed a — to have the bonds of Muhlenburgh county printed for $400,000
107 in the capital stock of the Elizabethtown and Paducah Railroad Company, in accordance with the order calling election to vote said amount, if such bonds be necessary.

TUESDAY, *the 1st Day of June*, 1869.

Court met pursuant to adjournment.

Present: S. P. Love, presiding judge.

The county court of this county having subscribed four hundred — dollars to the capital stock of the Elizabethtown and Paducah Railroad Company, and having issued the bonds of the county, with coupons attached, for the payment of such subscription within twenty years, at the Bank of America, in the city of New York, with seven per cent. interest thereon, payable semi-annually at said bank, it is ordered that a tax of one dollar and thirty cents be levied upon each one hundred dollars in value of *on* the real estate and personal property in the county subject to taxation under the revenue of this State, including the amounts owned by residents of the county which ought to be given in under the equalization laws for the purpose of paying the semi-annual interest on said bonds falling due and payable on the first day of September, 1869, and on the
108 1st day of March, 1870, and the cost of collecting and disbursing said tax, and that same be collected by Thos. M. Morgan, sheriff of this county, who is hereby appointed collector of the taxes herein levied. Whereupon said Morgan, as sheriff, with Wm. H. Rice, T. H. Reynolds, C. C. Martin, P. B. Wickliffe, and Wyatt Oates, his sureties, executed the bond as such collector, conditioned that said Morgan will promptly and faithfully collect and pay over to the proper person, within the time prescribed by law, all taxes levied under an act of the General Assembly of the Commonwealth of Kentucky entitled An act to amend the charter of the Elizabethtown and Paducah Railroad Company, approved Feb'y 24th, 1868, which may be placed in his hands for collection, w-ich bond and the surety thereon are approved and the bond ordered to be filed. It is further ordered that F. B. Hancock, Johnathan Short, and F. M. Allison be, and they are hereby, appointed a board of commissioners of the sinking fund of this county, who were thereupon, in the presence of the court, duly sworn faithfully to discharge their duties according to the best of their skill and judgement. Whereupon the said board of commissioners appointed the
109 said F. B. Hancock treasurer, who executed a bond to the Commonwealth, with J. H. Rind and E. R. Weir as their sureties, conditioned for the faithful keeping and disbursing of all money as treasurer of said board, which bond and the sureties thereon were also approved by the court and the bond is ordered to be filed.

At a county court began and held for Muhlenburgh county, at the court-house, in Greenville, Ky., on Monday, the 30th day of August, 1869.

Present: S. P. Love, P. J., and T. R. Clark, J. P. Hendricks, D.

B. Rall, J. J. Wood, W. R. Cory, J. M. Williams, and Jas. Adcock, J. H. Morton, Esqrs.

The foregoing names beginning with T. R. Clark are interlined in the exhibit of which this is a copy.—(Clerk.)

Thos. Bruce, clerk of this court, reported that he did, on the 29th day of June, 1868, in conformity with and in obedience to an order of this court made on the 3 day of June, 1868, subscribe for and on behalf of Muhlenburgh county four thousand shares (four hundred thousand dollars) to the capital stock of the Elizabethtown and Paducah Railroad Company.

At a county court began and held for Muhlenburgh county, at the court-house, in Greenville, Kentucky, on Monday, 30th
110 day of May, 1870.

Present: S. P. Love, presiding judge.

It is ordered by the court that there be levied and collected by the sheriff of this county one dollar and 20 cents on each one hundred dollars' worth of property in this county subject to taxation under the revenue laws of this State to pay the semi-annual interest on the four hundred — dollars subscription to the "E. & P. railroad." Whereupon said Morgan, sheriff of this county, executed bond for the faithful performance of his duties in the collection of said levy and paying the same over to the commissioners of the sinking fund for the county within the time prescribed by law, with C. C. Martin, W. K. Morgan, F. J. Martin, and John B. Hays as his sureties, *who* was approved by the court.

At a county court began and held for Muhlenburgh county, at the court-house, in Greenville, Ky., on Monday, the 29 day of May, 1871.

Present: S. P. Love, P. J.

It is ordered by the court that there be levied and collected by the sheriff of this county one dollar and 25 cents on each one hundred dollars' worth of property in this county subject to tax-
111 ation under the revenue laws of this State, to pay the semi-annual interest on the four hundred thousand dollars subscription to the E. & P. R. R.; whereupon Charles B. Wickliffe, sheriff of this county, executed bond for the faithful performance of his duty in the collection of said levy and paying the same over to the commissioners of the sinking fund for this county within the time prescribed by law, with Thos. M. Morgan, J. F. Rice, D. W. Jernigan, B. E. Pittman, Robert Glenn, T. H. Reynolds, Moses Wickliffe, & J. Moore as his sureties; which was approved by the court.

At a county court began and held for Muhlenburgh, county, Ky., at the court-house, in Greenville, Kentucky, on Monday, the 27 day of May, 1872.

Present: S. P. Love, P. J.

It is ordered by the court that there be levied and collected by the sheriff of this county one dollar and 40 cents on each one hundred dollars' worth of property in this county subject to taxation under the revenue laws of this State to pay the semi-annual interest on the

four hundred — dollars subscription to the "E. & P." R. R. Whereupon Charles B. Wickliffe, sheriff of this county, executed
112 bond for the faithful performance of his duties in the collection of said levy and paying same over to the commissioners of the sinking fund for this county within the time prescribed by law, with W. T. Morgan, J. H. Craig, Thos. M. Morgan, Z. Rose, John T. Reynolds as his sureties, which was approved by the court.

At a county court began and held for Muhlenburgh county, at the court-house, in Greenville, Ky., on Monday, the 26th day of May, 1873.

Present: S. P. Love, P. J.

It is ordered by the court that there be levied and collected by the sheriff of this county one dollar and twenty-five cents on each one hundred dollars' worth of property in this county subject to taxation under the revenue laws of this State to pay the semi-annual interest on the four hundred thousand dollars subscription to the E. & P. R. R. Whereupon C. B. Wickliffe, sheriff of this county, executed bond for the faithful performance of his duties in the collection of said levy and paying same over to the commissioner- of the sinking fund for this county within the time prescribed by law, with W. T. Morgan, John F. Rice, M. M. Jernigan, P. H. Baker, Thos. M.
113 Morgan, Eugene Eaves, N. J. Harris as his sureties, which was approved by the court.

At a county court began and held for Muhlenburgh county, at the court-house, in Greenville, Ky., on Monday, the 25 day of May, 1874.

Present: S. P. Love, P. J.

The following justices for this county appeared and took their seats, viz: T. R. Clark, John H. Frost, John H. Morton, Jaco M. M. Vick, F. J. Driskell, B. E. Pittman, James J. Wood, W. A. Thompson, S. J. Hunt, Lewis Jones, and S. M. Eaton.

F. B. Hancock, commissioner of the sinking fund for Muhlenburgh county, exhibited into court $3,000.00 of Muhlenburgh county bonds for the purpose of having them destroyed or cancelled.

Thereupon John H. Morton, a justice of the peace for said county, made the following motion, which was seconded:

That they did not recognize the bonds produced to court as the property — or belonging to the county. They therefore refused to take any action in the matter.

Those who voted in the affirmative were: T. R. Cook, John H. Frost, John H. Morton, Jacob M. Vick—B. E. Pittman refusing to vote—J. F. Driskell, J. J. Wood, W. A. Thompson, S. J. Hunt, Lewis Jones, J. P. Hendricks, and S. M. Eaton—11.

114 Those who voted in negative were: S. P. Love, presiding judge.

It appearing that the taxable property of Muhlenburgh county is $2,330,562, and that it will require an ad valorem tax upon all the real and personal property of said county of $1.40 upon each $100 worth of taxable property to meet the interest upon the $400,000.00 of bonds issued by the judge of the county court of said county to

aid in the construction of the E. & P. R. R. for the year commencing March 1st, 1874, and ending 1st day of March, 1875, and upon the question being put to the court as to whether they will levy said tax, a majority of the justices of said county being present—

Those who voted in the affirmative were: S. P. Love, presiding judge.

Those who voted in the negative were: T. R. Clark, John H. Frost, John H. Morton, Jacob M. Vick, J. F. Driskell, B. E. Pittman, James J. Wood, W. A. Thompson, S. J. Hunt, Lewis Jones, J. P. Hendricks, S. M. Eaton—12.

STATE OF KENTUCKY, }
County of Muhlenburgh, } *sct:*

I, W. T. Stiles, clerk of the county court in and for the
115 county aforesaid, certify that the foregoing are true copies of the orders made by the Muhlenburgh county court as taken from the records in my office.

Given under my hand as clerk of said court this 9th day of July, 1885.

W. T. STILES, *Cl'k,*
By W. R. EAVES, *D. C.*

This is endorsed on the back of said exhibit by the clerk of this court: Filed Aug. 22, 1885. Att.: Geo. W. Townes, cl'k, by W. H. Reynolds, D. C.

Exhibit "B," filed with and referred to in plaintiffs' petition, is in words and figures as follows, viz:

EXHIBIT "B."

SOUTH CARROLLTON, }
Muhlenburgh County, Kentucky. }

The following votes were cast for and against the R. R. tax:

Twenty-nine votes against railroad tax; three hundred and twenty-nine votes —.

Given under our hands this 30th day of May, 1868.

JAS. ADCOCK,
JOHN REED, *Judges.*

Attest: M. W. GIBBS, *Clerk.*

STATE OF KENTUCKY, }
Muhlenburgh County. }

116 We, W. W. Martin and W. E. Mobley, judges at Boggess precinct, Muhlenburgh county, Kentucky, on Saturday, May 30, 1868, certify that the number of votes cast for the Elizabethtown and Paducah railroad at said precinct am'ts to 283; against, 24, said vote being upon a proposition to vote or not a tax of *of* four hundred thousand dollars for building of said road.

Given under our hands this 30 day of May, 1868.

W. W. MARTIN,
WM. E. MOBLEY, *Judges.*

Attest: THOS. J. EADES, *Clerk.*

STATE OF KENTUCKY, }
County of Muhlenburgh, } *sct:*

We, E. G. Neel and John W. Williams, — that at an election held at the court-house, in Greenville, Muhlenburgh county, Kentucky, on Saturday, the 30th day of May, 1868, on the question whether or not the county court of said county shall subscribe for and on behalf of said county for $400,000 of the capital stock of the Elizabethtown and Paducah Railroad Company, at the close of the polls the vote stood thus: For the R. R. subscription, 297 votes; against R. R. subscription, 1 vote; all of which votes were taken at the court-house aforesaid and within the *house* prescribed by law.

117 Given under our hands this 30 day of May, 1868.

E. G. NEEL,
J. L. WILLIAMS, *Judges.*

We do certify that the foregoing election was conducted according to law.

D. B. ROLL,
JARRED WALLACE, *Judges.*
S. L. JAMES, *Sheriff.*

H. H. DENNIS, *Clerk.*

This is to certify that at an election held at Myers Mills on the 30 day of May, 1868, for railroad subscription to aid in building a railroad from Elizabethtown to Paducah, Kentucky, — received the following votes: For subscription, 56 votes; against subscription, 4 votes.

H. G. NEWMAN,
A. J. HUNT, *Judges.*
SAM'L TURNER, *Clerk.*

LOTT PENROD, *Sheriff.*

At an election held at Eades post office for issuing bonds for $400,000 the following votes were —: For the tax, 18 votes; against the tax, 167 votes.

Given under our hands May 30th, 1868.

ISAAC MILLER,
S. M. EATON, *Judges.*

STATE OF KENTUCKY, }
County of Muhlenburgh, } *sct:*

118 I, W. T. Stiles, clerk of the county court in and for the county and State aforesaid, certify that the foregoing are true and complete copies of the certificates of the officers of the election held at the several voting places in Muhlenburgh county on the

30th day of May, 1868, of the votes cast on the proposition to subscribe for four thousand shares of the capital stock of the Elizabethtown and Paducah Railroad Company as the same are of record and on file in my office.

Given under my hand as clerk of the Muhlenburgh county court this 13 day of July, 1885.

W. T. STILES, *Clerk.*

Summons Against J. H. Morton, County Judye, & Members of Funding Board.

The Commonwealth of Kentucky to the coroner of Muhlenburgh county, Greeting:

You are commanded to summon Alexander Tinsley, sheriff of Muhlenburgh county, Ky.; J. H. Morton, county judge of the same county; Sam. Weir, Wm. Whitaker, A. E. Newman, and J. E. Mills, and all other members of the funding board, and Robert Glenn, holder of original bonds, and G. D. Park, holder of compromise bonds, and all other holders of bonds issued to the Elizabethtown & Paducah Railroad Company to answer, on the first day of next
119 August term of the Muhlenburgh circuit court, a petition in equity filed against them in said court by R. H. Brown, W. A. Dukes, J. F. Morris, W. H. Morris, Andrew Walker, Sidney Gardner, Robert Lockett, Thos. Reynolds, W. E. Glenn, David Wakeland, J. W. Mores, T. W. Wood, W. O. Davis, James Williams, S. L. Weaver, Sam. Davis, C. A. Wickliffe, Cal. Hamilton, John Williams, S. N. Estes, A. M. Sothard, Charles Dewberry, Albert Roark, Martin Miller, G. Grabble, Jno. Fluellen, Chas. Green, W. T. Davis, A. Y. Glenn, E. P. Tinsley, B. F. Tinsley, Charles Centers, W. H. Arnold, B. T. Casebier, B. Y. Casebier, J. D. Casebier, Moses Tinsley, John Bruce, Bart Flarity, R. Y. Harris, J. H. Hunter, J. F. Jarvis, Gabriel Doss, J. F. Whitehouse, Jas. Rose, E. Bogwell, J. W. Noffsinger, W. H. Noffsinger, E. A. Noffsinger, W. H. Noffsinger, R. T. Casebier, Mike Rose, G. B. Rose, Geo. Doss, W. P. Drake, G. O. Boothe, A. R. Adcock, T. A. Lisk, S. B. Drake, W. B. Doss, Wm. Drake, Chas. Lewis, T. R. Heltsley, Joel Doss, Cal. Carver, Lewis Carver, Jr., Thos. Carver, Rob't Gibbs, W. C. Gibbs, J. H. Smith, A. C. Rust, Jo. Coursey, Geo. Coursey, Jno. Driskill, Peter Williams, David Sweeney, Sam. Mitchell, Jno. Horn, J. C. Davenport, Peter Reblet, Jno. Nanny, Alf. Buchannan, W. F. Weliford, Wesley Green, G. S. Ball, Jno. Tully, H. C. Mercer, J. R. Randolph, Rich. Stewart, Richard Chandler, Gus. Stovall, Alf. Miller, J. A. Forehand, W. T. McElvain, B. B. Johns, W.
T. Vincent, Louis Stewart, W. T. Underwood, T. G. Bruce,
120 P. M. Sparks, W. C. Stewart, T. J. Roark, Jno. Woods, Jno. Jago, Verge Jago, Dan. Ball, J. H. McElvain, W. B. Stewart, Jno. Johnston, Lee Ezell, Jesse Mercer, C. W. Stoball, E. B. Stewart, J. W. Vincent, T. J. Hendricks, J. B. Forehand, T. B. Vincent, J. T. Mercer, J. T Ward, Jesse Roark, J. C. Caldwell, W. H. Buck, A. G. Mercer, G. M. Ball, T. B. Wilkins, T. M. Gossett, P. H. Stovall, C. T. Medcoker, C. M. Lewis, T. J. Stovall, J. S. Hendricks,

F. M. House, T. J. Jones, J. M. Forehand, D. C. Jones, Aaron Wickliffe, J. W. Swiney, E. M. Underwood, A. J. Browning, R. C. Underwood, J. M. Mercer, J. A. Stewart, Jas. Carley, J. W. Gill, Rob't Stewart, J. N. Roark, Dan. Stewart, J. H. Myers, M. S. Kittinger, J. H. Vincent, A. E. Ball, Thos. Haley, Sam. Wilkins, Barn. Wilkins, Phil. Wilkins, Rob't Jarvis, W. Jarvis, Hallec Jarvis, R. E. Humphrey, L. J. Littlefield, Jerry Hunt, J. W. Wheeldon, Jno. Wheeldon, John Danner, John Wilkins, J. J. Downey, J. R. Harris, Noah Gossett, James Gill, Geo. Heraldson, Wm. Brown, W. S. Gossett, J. W. McDonald, J. E. McDonald, J. H. Eades, J. B. Stone, T. J. Eades, Green Morris, Joe Cobb, W. M. Overhutts, L. E. Tucker, J. C. Cobb, J. E. Gill, Sam. McNary, John Moore, Dan. McNary, Jas. McNary, *Jas. McNary*, Jesse Hays, Peter Moore, Jas. White. Jno. H. Eaton, Wm. Pevlar, J. E. Stoud, H. C. McDonald, Brad Noffsinger J. A. Stringer, J. R. Noffsinger, L. J. Steersman, H. Riger, Wm. Sto-
121 baugh, D. J. Gish, H. W. Clark, Ad. Wilkins, Jno. Wilkins, Jno. Sally, Jacob Sally, Aaron Vincent, Elijah Richy, Simon Miller, T. F. Vincent, R. Jarvis, D. J. Vincent, R. T. Eaton, Jas. Stobaugh, J. C. Vincent, S. E. Vincent, J. M. McElvain, S. E. Watkins, J. D. Watkins, J. H. Vincent, S. D. Kittinger, A. W. Pevlar, Press Richey, Davis Richey, Adam Stobaugh, J. T. Watkins, J. W. Markswell, E. C. Clark, L. H. Wright, J. W. Wilcox, Isaac Reed, A. J. Reed, P. S. Nofsinger, A. Sallee, C. T. Underwood, P. P. Vincent, Lewis Stobaugh, W. T. Martin, J. W. Stearsman, C. L. Watkins, J. S. Green, C. C. Lock, J. C. Hite, M. H. Capps, J. R. Lewis, N. B. Board, M. J. Board, A. M. Copps, David Board, E. D. Duvall, Rob't Vincent, Rich. Evitts, E. J. Anderson, T. O. Vincent, D. N. McRoy, J. G. Board, W. H. Martin, G. W. Martin, Ralph Uzzle, Rich. Stanley, W. C. Tyson, T. C. Tyson, Jno. Tyson, Alf. Stanley, Thos. Merce, Ed. Bennett, Jas. Bennett, Jr., Phillip McKinney, Jas. Bennett, Sr., Bayless Tyson, Bennett Tyson, P. D. Bennett, R. J. Stovall, L. Forrester, S. B. Green, W. R. Wilson, M. Tyson, W. E. Mathews, R. F. Haley, Wm. Haley, Shad Uzzle, A. D. Mathews, Gillis Tyson, T. E. Tyson, B. F. Williams, Wm. Stewart, Jas. Uzzle, L. J. Moore, Jno. Bourland, Ben. Randolph, T. J. Oates, T. R. S. Moore, Adam Uzzle, W. E. Haley, Wm. Tyson, Dixon Garis, T. Foster, Reason Cash, J. J. Moore, S. A. Stewart, W. S. Phillips,
122 Scott Phillips, A. J. Whitmer, Jerry Whitmer, W. D. Strader, J. C. Browning, D. B. Phillips, E. D. Phillips, Louis Phillips, Jno. Phillips, Ephraim Phillips, Vincent Browning, J. M. Whitmer, W. D. Moore, C. H. Shank, J. F. Whitmer, J. T. Browning, J. J. Whitmer, Jno. Wright, G. W. Whitmer, J. E. Shank, J. W. Ward, C. L. Browning, G. W. Short, J. E. Shank, Jr., Jas. Shank, J. N. Vincent, G. W. Phillips, Isaac Donaho, G. W. Whitmer, Isaac Whitmer, J. L. Whitmer, J. F. Rich, Lewis Hendricks, M. Shank, J. D. Ford, W. H. Haley, Geo. Vincent, J. D. Gish, Baxter Jago, Geo. Wolcol, Jno. Strother, Peter Shaver, Jno. Mason, Dan. Barnes, L. R. Slaton, Albin Slaton, Alf. Wallace, Wm. Bracher, John Bracher, Hugh Ferguson, C. C. Sharp, Jeff. Moore, Wm. Casebier, Ed. Casebier, R. T. Johns, J. L. Sheets, A. L. Page, J. C. Stersman, G. Glenn, J. H. Adcock, R. D. Beck, Jas. Adcock, Zach. Adcock, G. W. Stinson,

Henry Howerton, Far. Mason, S. M. Roll, Jr., J. R. Watkins, J. W. Nickles, A. P. Fogle, J. F. Fogle, Fogle C. Rud, Ben. Young, David Holland, J. F. Gray, J. S. Eades, J. A. Doss, J. W. Dukes, W. C. Jarvis, H. R. Eades, D. H. Whitehouse, D. H. Bean, Wm. Doss, Jas. H. Doss, J. W. Fentress, C. W. Whitehouse, Jno. Graddy, Chas. Nicholls, Wm. Boland, Jno. Vick, A. J. Copps, T. D. Morris, J. D. W. Fortny, Jno. Evits, Jesse McCown, Wm. Bethel, C. Brown, J. T. Divine, Jno. Stoball, Peter Baker, Jas. Butler, J. B. Cobb,
123 John Harris, Jas. R. Harris, J. W. Newman, L. D. Vaught, E. L. Browder, Edmond Faugh, S. C. Gish, S. Lacefield, R. Y. Thomas, Jr., S. D. Hill, W. H. Morris, L. M. Edwards, P. L. Lam, Jno. W. Doss, R. E. Humphrey, Jr., A. J. Ward, Thos. Ward, E. J. Walker, Thos. Gibbons, Jno. Bethel, M. P. Creel, T. D. Humphrey, W. C. Stewart, N. Sims, S. S. Divine, Wm. Galloway, P. W. James, Henry Ford, R. J. Walker, J. W. Phillips, I. A. Haley, J. R. Wilcox, J. D. Rich, Jno. Ford, Elias Watkins, D. N. G. Jones, W. H. Edwards, A. J. Phillips, A. Dorsett, B. N. Phillips, J. E. Stringer, Hughes Martin, B. W. Hendricks, S. J. Underwood, F. T. Hendricks, Wm. Lewis, Dan. Gissom, F. P. Browning, W. T. Underwood, W. C. Jones, Lewis Phillips, Wm. Martin, B. J. Humphrey, Joe Steersman, Jno. Hilliard, J. S. Brown, Julius Tucker, C. M. Kirtley, D. B. Nofsinger, T. A. Brown, Jas. Graddy, J. S. Wilkins, Barney Wilkins, Tho. Whitmer, H. L. Patterson, J. B. Rhoads, J. E. Rhoads, Elijah Wilkins, Henry Christ, N. Harper, W. H. Divine, S. T. Hubbs, E. G. Divine, D. T. Hill, H. C. Downey, Wm. Nofsinger, W. T. Shaver, Alf. Hopkins, R. N. Wiggins, Jesse H. Vincent, D. N. B. Turner Jacob Tinkle, J. W. Gossett, Joe Lockery, W. A. Turner, W. J. Wilkins, Jr., David Gish, Jesse Milliard, Henry Revlar, J. H. Vincent, Jo Gossett, Joe Reed, Jno. Scott, Benj. Johns, Geo. France, J. A. Vincent, J. C. Kittinger, Jacob Gossett, S. D. Groves, C. C. Gossett, J. W. Wiggins, J. A. Shaver, J. W. Gish, W. T. Vincent, J. B. Kittinger,
124 E. L. Miller, E. D. Fuller, N. T. Humphrey, H. C. Markwell, Wm. Rich, T. R. Gross, Wm. Wilkins, J. H. Nofsinger, W. H. Woodson, P. G. Woodson, S. D. Gish, D. W. Nofsinger, W. H. Overhultz, Jacob Gross, J. W. Coffman, J. T. Latt, Lee Stewart, Sye Holland, Jas. Sallee, F. M. Grundy, Thos. Moody, J. H. Stewart, T. B. Clark, D. H. Vincent, Jno. H. Vincent, J. S. Whitmer, Jacob Hendricks, J. W. Turner, Rob't Drake, W. H. Grundy, Wm. Calvert, P. M. Calvert, Amos Richey, Alf. Autle, J. W. Danner, Isaac Reed, Sr., D. C. Whitmer, Jacob Wright, Amos Wright, Jacob Hill, D. B. Humphrey, Dan. Gish, Jr., Netter Wilkins, D. W. Hopkins, J. L. Gross, J. L. Ivins, J. E. Hendricks, J. D. Gish, Solomon Nofsinger, West Scott, P. D. Richey, Elic Scott, Dan. Pevlar, E. J. Shaver, Elijah Wilkins, John Stabaugh, J. C. Markwell, J. D. Goodlove, B. A. Cosby, Robert Hill, T. W. Vincent. R. K. Vincent, B. E. Gish, H. P. Vanoy, R. E. Whitmer, W. T. Miller, J. E. Gish, J. R. Wright, J. M. Gossett, Charles Dunevan, A. B. Gross, E. W. Wright, R. S. Hickerson, T. M. Wright, Jno. Kittinger, Jr., G. D. Kittinger, Joe W. Wheeldon, Richard Curd, S. H Curd, Geo. York, Reno Lovelace, Elwood Fentress, Wm. Heunan.

Ira Kendall, Wm. Cassady, C. F. Tappan, C. H. Tappan, J. R. Whooton, N. B. Hughlett, J. W. Howlett, B. S. Hewlett, J. L. Gish, C. L. McConn, A. M. Hery, J. L. Taylor, Lafe Bidwell, Jake N. Reed, Peter Bruce, A. C. Laffoon, Warren Marble, L. T. Coleman, Wm. Walston, Green Walston, J. O. Everly, J. N. Moorman, J.
125 M. Jackson, Jno, Sims, Ab. Fentress, Coy Ross, Harvey Clark, T. M. Baker, Alf. Wilson, Pink Ross, Charles Carbon, Peter McConnell, Ed. Heck, Will. Jackson, Ed. Carbon, Austin Wickliffe, Silas Blacklock, Alf. Long, Henry Charles Wilson, Levi Nicholls, W. C. Hackett, Jas. Walcott, R. W. Botsel, Geo. Purdy, W. F. Ward, J. H. Hughes, F. M. McMullen, G. W. Hardison, Jno. Hunt, Jeff. Hunt, J. L. Anderson, Lott Hunt, Jno. Flemming, J. M. Hope, Wm. Hughes, C. W. Cisney, Jas. Corsey, J. W. King, D. J. Flemming, Newman Smith, A. J. Buckhannon, J. W. McPherson, Jno. W. McPherson, Joe Fox, Wm. Hill, Rob't Bodine, Charley Whitehouse, Dan. Whitehouse, Wm. Whitehouse, J. T. Kimble, A. J. Dearmond, Chas. Nichols, J. W. Coffman, G. B. Landrum, G. W. Doss, Jno. Eades, Dan. Hunt, J. M. Hays, J. W. Wood, J. H. Wood, Wm. Briggs, Jas. Tuly, J. H. Hunt, David Sumner, W. H. Simmons, Sam. Tuly, J. O. Coursey, J. H. Eades, J. T. Skipworth, Thos. Skipworth, Chas. Bradley, Alf. Hope, Doc. Hope, J. W. Waterman, Green Hunt, Dan. Sumner, Henry Unnan, Ben. Miller, C. H. Patterson, J. R. Childers, J. W. Jones, H. C. York, J. P. Schimmel, Jeff. Van, Johnson Batsell, Jacob Wickliffe, J. W. Newton, Charles Arnold, Henry Bradley, and the Memphis Coal & Mining Company, and warn them that upon their failure to answer the petition will be taken for confessed or they will be proceeded against for
126 contempt; and you will make due return of this summons on the 1st day of the next August term of said court.

Given under my hand as clerk of said court this 27th day of July, 1885.

GEO. W. TOWNES, *Clk.*

On the back of the above summons was endorsed the following order of injunction, viz:

Muhlenburgh Circuit Court.

R. H. BROWN & Others, Plaintiffs,
against
ALEXANDER TINSLEY, Sheriff of Muhlenburgh County, Ky., and J. H. Morton, County Judge of the Same County, & Others, Defendants.
} Order of Injunction.

The defendants, Jno. H. Morton, county judge of Muhlenburgh county; Martin Kittinger, Wm. Young, Samuel Weir, Wm. Whitaker, A. E. Newman, and J. E. Mills, members of the funding board of Muhlenburgh county, are, in pursuance of an order of injunction granted in the above-entitled action by the judge of the Muhlenburgh circuit court, hereby enjoined and restrained until the further order of said court from making any other or further levy of taxes

for the purpose of paying the principle or interest of the bonds issued by the directions of said funding board.

Given under my hand as clerk of said court this 27th day of July, 1885.

GEO. W. TOWNES, *Clk.*

127 On the foregoing summons and order of injunction are the following endorsements by the officers who executed same, viz:

Executed the within summons & the foregoing order of injunction by delivering a copy of said summons, with said order of injunction endorsed thereon, to each of the defendants, viz., J. H. Morton, judge of Muhlenburgh county, Kentucky; Wm. Young & Martin Kittinger, members of the funding board of Muhlenburgh county, and the defendants, Geo. D. Park & Rob't Glenn, on the 29th day of July, 1885; also by delivering a copy thereof, with said ord- of injunction, to each of the defendants, J. E. Mills, A. E. Newman, and Wm. Whitaker, members of the funding board of Muhlenburgh county, Kentucky, on the 30th dav of July, 1885.

W. B. JAMES, *Cor. M. C.*

And also the following, viz:

Executed the within summons & order of injunction on the defendant, Samuel Weir, member of the funding board of Muhlenburgh county, Kentucky, by delivering to him a copy of this summons, with said order of injunction endorsed thereon, this 30th day of July, 1885.

JOHN COMBS, *Jailer M. C.*

The following amended petition was filed by plaintiffs, viz:

128 R. H. BROWN & Others, Plaintiffs,
against
ALEXANDER TINSLEY & Others, Defendants.

C. B. Summers, F. J. Martin, E. J. Ragon, W. J. Nofsinger, S. R. Noffsinger, W. M. Tyson, Ben. Plain, Felix Vincent, Thos. Shanks, David M. Gill, Jno. W. Harelson, Hamilton Reeves, J. W. Wood, Jno. Perrod, A. T. Hope, Geo. Penrod, David Perrod, Wm. Witney, David Whitaker, John J. Hunt, Simpthy H. Davis, Mary E. Steel, Nancy J. Summers, Eli Hughes, Jno. Moore, Sandford McNary, Peter Moore, Willis Park, Edy Clark, Andy Park, Ruben Evans, Rosy Littlepage, Geo. McNary, Jas. H. Evaves, Trish Park, Jonce McNary, Henry Maritin, Nelson Moore, J. E. Clemanons, G. W. Oliver, Jas. Forrester, Elisha Moore, C. B. Randolph, R. F. Jarvis, Arnett Jarvis, Jno. Forrester, A. L. Moore, Halack Jarvis, Sarah E. Oates, Wm. Jarvis, Martha W. Haley, America Looney, Henretta Tyson, J. D. Pevlar, Wm. Wilkins, Isaac Gossett, T. D. Pevlar, Jas. Newman, J. V. Fentress, L. D. Fentress, Chas. Fentress, C. N. Kimbley, D. C. Butock, W. P. Robinson, Thin Vally, C. P. Robinson, J. S. Bennett, Roger Robertson, E. K. Bernard, Jno. M. Groves, Jacob Groves, J. J. Driskill, F. J. Irving, Benj. Tully, W. O. Wells, C. C.

Driskill, C. T. Ferrill, J. A. Mill, N. Wells, Mansfield Jones, J. F. Boggess, David Sweeney, F. M. Swiney, B. A. Williams, J. F. Dukes, J. S. Tuley, W. E. Cawley, W. H. Land, F. S. Jockley, James Gary, J. C. Wells, Buck Greenwood, J. F. Wells, Amod Jones, Jim
129 Walker, Sam. Swinny, Tom Gary, Frank Wells, B. A. Chappel, J. H. Brown, T. R. Reno, C. Summers, Mike Philips, T. N. Divine, B. F. Kimble, J. N. Noffsinger, E. R. Whitmer, Sam. Gundy, Ab. Whitmer, Ben. Drake, J. E. Reid, J. R. Bodine, W. F. Tyson, Elijah Richey, Jr., H. T. Ambrose, John McCaro, D. J. Flemming, B. G. Myers, W. E. Robinson, A. J. Mefford, J. E. Crandell, G. L. Night, J. R. Allen, S. B. Allen, J. B. Depoyster, T. L. Draper, David Martin, Geo. Mefford, J. A. M. Cox, S. R. Dobbs, G. T. Kimble, J. R. Mefford, B. T. Riught, C. W. Brooks, J. H. Night, W. Y. Knight, E. A. Abbott, T. E. Myers, P. F. Turner, G. W. Allen, W. M. Nana, W. W. Vaught, Dan. Grant, G. W. Mefford, J. S. Williams, D. M. Robinson, S. F. Knight, J. G. Meyers, W. N. Sumner, Green Akin, F. T. Whitney, Chas. Sulivan, G. H. Danks, Elias Hill, G. M. Kimmell, J. F. Knight, Wiley Robertson, Jno. Dill, Esquire Bailey, W. H. Meyer, John McKlish, Ama Flemming, Mary A. Knight, Eley Depoyster, W. R. Baker, citizens and tax-payers of said county, ask that they *me* be joined as plaintiffs in the original petition in equity filed *is* this cause, and they pray for the same relief, special and general, as that prayed for in the original petition.

T. W. BROWN,
A. J. KELLAR,
For Plaintiffs.

Endorsed by cl'k: Filed August 12th 1885. Att.: Geo. W. Townes, cl'k.

130 On the 22nd day of August plaintiffs filed the following amended petition, viz:

In Muhlenburgh Circuit Court.

R. H. BROWN & Others
vs.
ALEXANDER TINSLEY & Others. } In Equity.

The following citizens and tax-payers of said county respectfully ask the court to be joined with the plaintiffs in the original petition filed in this cause, to wit: W. S. Wood, E. Wood, Geo. W. Ellison, Geo. Whitson, Jno. Buskill, Sam'l Meyers, Jno. Penley, Wm. Hill, Mary J. Nanny, Jno. S. Hill, S. F. Knight, P. M. Knight, W. M. Nanney, A. J. Davis, Pumelia J. Raught, Susan Hunter, James Gilmore, Rob't Kiplinger, J. H. Shemwell, H. H. Dennis, Chas. Lely, Martin Wyatt, Dunken Penley, W. H. Shemwell, Jno. C. Ham, A. J. Buskill, W. McDougal, John Pidcock, Millard John Pidcock, Millard Johnson, Rufus Littlepage, L. Simmons, Jesse Walace, W. S. James, Benjamin Ball, M. J. McDougel, W. T. Ball, J. B. Raught, Catherine Ham, M. J. Ham, R. H. Kiplinger, J. S. Shemwell, R. J. Shomwell, J. W. Shomwell, S. C. Griffith, Geo. Smith, J. W. Case-

bier, S. A. Wood, W. J. Stinson, W. L. Russell, and pray for the same relief, special and general, asked for by the plaintiffs in the original petition.

T. W. BROWN,
A. J. KELLAR,
Solicitors for Plaintiffs.

131 Filed Aug. 22nd, 1885.
Att.: GEO. W. TOWNES, *Cl'k.*

The following notice to dissolve injunction is in the words and figures following:

Notice by Def'ts to Dissolve Injunction.

Muhlenburgh Circuit Court.

R. H. BROWN, W. A. DUKES, J. F. MORRIS, &c., Plaintiffs,
versus
ALEXANDER TINSLEY, Sheriff of Muhlenburgh County; J. H. Morton, Judge Muhlenburgh County; Martin Killinger, William Young, Samuel Weir, W. Whitaker, A. E. Newman, J. E. Mills, and Others, Defendants.

You are hereby notified that on the 12th day of August, 1885, at the hour of ten o'clock a. m. or as soon thereafter as council can be heard, the defendants to this action will move the Muhlenburgh circuit court, at the court-house, in Greenville, Muhlenburgh county, Kentucky, for an order dissolving the injunction issued in this action against the defendants and each of them, which was granted under & by virtue of the order of John R. Grace, judge of said court, in said action, dated July 23rd, 1885. Said motion will be made upon the petition and exhibits filed therewith.

Dated Aug't 5th, 1885.

WM. WICKLIFFE &
RODMAN & BROWN,
Of Counsel for Defendants.

Which notice was returned endorsed with the following endorsements by the officers executing the same:

132 *Endorsements by Officer Executing Notice.*

Executed the within notice by delivering a copy thereof to A. J. Kellar, attorney for plaintiffs herein, this 10th day of August, 1885.

W. B. JAMES,
Cor-ner M. C.

Executed the within notice on A. J. Kellar, attorney for R. H. Brown, W. A. Dukes, & others, by leaving a copy thereof, at his usual place of abode, with Chambers Kellar, a person over 16 years of age, residing in same family with said A. J. Kellar, this 8th day of August, 1885.

W. B. JAMES, *Cor. M. C.*

Motion to Dissolve Injunction.

Muhlenberg Circuit Court.

R. H. BROWN, &c., Plaintiffs,
against
ALEX. TINSLEY, Sheriff, &c., Defendants. } Motion.

The defendants, pursuant to notice heretofore given, move the court for an order des-olving the injunction heretofore granted herein.

M. C. HAY & OTHERS,
Att'ys for Defendants.

Filed Aug. 12th, 1885.
Att.: GEO. W. TOWNES, *Cl'k.*

Demurrer.

R. H. BROWN & Others, Plaintiffs,
against
ALEX. TINSLEY, Sheriff, & Others, Defendants. } No. 1443. Demurrer.

The defendants demur to the petition herein because they say its statements do not state a cause of action against them
133 or any of them.

M. C. HAY & OTHERS,
Attorney- for Defendants.

Filed Aug. 12th, 1885.
Att.: GEO. W. TOWNES, *Cl'k.*

Order Filing Demurrer & Motion — Dissolve Injunction.

Muhlenburgh Circuit Court.

R. H. BROWN, &c., Plaintiffs,
vs.
ALEX. TINSLEY, Defendants. } Order.

This action having been called, the defendants entered a motion, in pursuance of notice heretofore given, to dissolve the injunction heretofore granted therein upon the petition and exhibits filed therewith. The defendants also filed a demurrer to the petition, and by consent of counsel on both sides this action is set for hearing on said motion to dissolve the injunction and on the demurrer to the petition on Friday, the 11th day of the present term of this court.

Filed 12th day of August, 1885.
Att.: GEO. W. TOWNES, *Cl'k.*

Petition to Jas. Alexander to be Made Party Def't.

Muhlenburgh Circuit Court.

R. H. BROWN & Others, Plaintiffs,
against
ALEX. TINSLEY, &c., Defendants.

The petitioner, James Alexander, comes and says that he is one of the defendants hereto, described generally as a holder of
134 bonds issued to the Elizabethtown and Paducah Railroad Company. He says that he holds and owns and so held and owned at the time of the commencement of this action nine bonds of the face value and denomination of one hundred dollars each and one bond of five hundred dollars; all of which bonds, interest coupons due since March 1st, 1884, inclusive, are attached; whereupon he asks to be allowed to enter his appearance and make defence to this action.

JAMES ALEXANDER.

Subscribed and sworn to before me by James Alexander this 20 day of August, 1885.

[Seal Notary Public, Sumner County, Tenn.]

G. N. GUTHRIE, *N. P.*

Endorsed by cl'k: Filed Aug. 21st, 1885. Att.: Geo. W. Townes, cl'k.

Order Filing Above Petition.

Muhlenburgh Circuit Court.

R. H. BROWN, Plaintiff,
against
ALEXANDER TINSLEY, Sheriff, &c., Def'ts.

AUGUST 21ST, 1885.

This day came James Alexander and presented his petition to be made a party defendant to this action & to be allowed to make defence to same; which petition is ordered to be filed, and said James Alexander is made a party defendant to this action.

135 Endorsed by clerk: Filed August 21st, 1885. Att.: Geo. W. Townes, cl'k.

Muhlenburgh Circuit Court.

R. H. BROWN & Others, Plaintiffs,
against
ALEX. TINSLEY, Sheriff, &c., Defendants.

The petitioner, Charles W. Trousdale, comes and says that he is one of the defendants hereto described generally as a holder of com-

promise bonds of the county of Muhlenburgh. He says he holds and owns and at the time of the institution of this action held and owned $7,000 bonds of the face value and denomination of 500's & 100's dollars each, and he asks to be allowed to enter his appearance of record and to make defence to this action.

CHAS. W. TROUSDALE.

Subscribed and sworn to before me by Chas. W. Trousdale this 19 day of August, 1885.

[Seal G. N. Guthrie, Notary Public, Sumner Co., Tenn.]

G. N. GUTHRIE, *N. P.*

Endorsement of cl'k: Filed Aug. 21st. Att.: Geo. W. Townes, cl'k.

Order Filing Above Petition.

Muhlenburgh Circuit Court.

R. H. BROWN & Others, Plaintiffs,
against
ALEXANDER TINSLEY, Sheriff, &c., Defendants. } Order.

This day came Chas. W. Trousdale and presented his peti-
136 tion to be made party defendant to this action & be allowed to make defence to same; which petition is ordered to be filed, and said Chas. W. Trousdale is made a party defendant to this action.

Endorsement of clerk: Filed Aug. 21st, 1885. Att.: Geo. W. Townes, cl'k.

Petition for Removal.

Muhlenburgh Circuit Court.

R. H. BROWN, W. F. DUKES, J. F. MORRIS, & Others, Plaintiffs,
against
ALEXANDER TINSLEY, Sheriff of Muhlenburgh County; J. H. Morton, County Judge of said County; Robert Glenn, Geo. D. Park, &c., Defendants.

Petition for removal to the United States circuit court for the 6th circuit & Kentucky district.

The petitioners, Chas. W. Trousdale and James Alexander, respectfully show to this honorable court that the matter & amount in dispute in the above-entitled suit and action exceeds, exclusive of costs, the sum or value of five hundred dollars, $500.00; that the controversy in this suit is between different citizens of different States; that your petitioners were at the commencement of this action and still are
citizens of the State of Tennessee, & the plaintiffs, each and
137 all of them, were then and still are citizens of the State of Kentucky. Your petitioners further state that in this suit and action above mentioned there is a controversy which is wholly

between citizens of different States and which can be fully determined as between them—that *it* is to say, a controversy between these petitioners on the one side and the said plaintiffs on the other; that the defendants Alexander Tinsley, J. H. Morton, Martin Kittinger, Wm. Young, Samuel Weir, A. E. Newman, and J. E. Mills and each and every one of them — ministerial officers of the said county of Muhlenburgh and have no pecuniary interest in this controversy; that the defendants Robert Glenn & Geo. D. Park refuse to make defense to the petition and are acting in concert with the plaintiffs therein, and petitioners are the only parties that have any real interest in the controversy adverse to plaintiffs.

Your petitioners make and file herewith a bond, with good and sufficient surety, for their — into the circuit court of the United States for the 6th circuit & district of Kentucky, on the first day of its next session, a copy of the record in this suit and action and for paying all costs that may be — by the said circuit court if the said circuit court shall hold that this suit and action has been improperly moved thereto. Your petitioners therefore pray this honorable court to accept this petition and said bond, and order the
138 transfer of said suit and action to said circuit court of the United States for the said sixth circuit and Kentucky district, at Louisville.

CHARLES W. TROUSDALE,
JAMES ALEXANDER, *Petitioners.*
By RODMAN & BROWN,
WM. LINDSAY, M. C. HAY,
Attorneys for Petitioners.

UNITED STATES OF AMERICA,
State and District of Tennessee, County of Sumner, } ss:

CHARLES W. TROUSDALE, being duly sworn, says that he is one of the petitioners named in the foregoing petition; that he has heard the same read & knows the contents thereof, and that the same is true of his own knowledge so far as the same relates to him.

CHARLES W. TROUSDALE.

Subscribed and sworn to before me by Charles W. Trousdale, as witness my hand and notarial seal, this 19th day of August, 1885.

[Seal G. N. Guthrie, Notary Public, Sumner County, Tenn.]

G. N. GUTHRIE, *N. P.*

UNITED STATES OF AMERICA,
State of Tennessee, County of Sumner, } ss:

ELI H. BROWN, who says he is an attorney for James Alex-
139 ander, being duly sworn, says that he is the James Alexander who signed the foregoing petition; that he has heard the same read and knows the contents thereof, and that the same so far as it relates to him is true of his own knowledge.

——.

Subscribed and sworn to before me by James Alexander this — day of August, 1885, as witness my hand and seal.

——— ———.

UNITED STATES OF AMERICA, }
State of Kentucky. }

ELI H. BROWN states that he is an attorney for James Alexander, one of the petitioners in the foregoing petition and who is now absent from Muhlenburgh county, and he says the statements of the foregoing petition so far as made by James Alexander are true, as he verily believes.

ELI H. BROWN.

Subscribed and sworn to before me by Eli H. Brown this 21st day of August, A. D. 1885. .

M. C. HAY,
Notary Public in and for Muhlenburgh County.

Endorsement of clerk: Filed August 21st, 1885. Att.: Geo. W. Townes, cl'k.

Where*fore* defendants filed the following bond, viz:

Bond.

Muhlenburgh Circuit Court.

Know all men by these presents that we, Charles W. Trous-
140 dale & James Alexander, as principals, and S. M. Bernard, surety, are held and firmly bound unto R. H. Brown and others, plaintiffs in the action of R. H. Brown & others, plaintiffs, against Alex. Tinsley, &c., defendants, now pending in the Muhlenburgh circuit court, in the penal sum of five hundred dollars; for the payment of which sum, well and truly to be made, we bind ourselves, our heirs & representatives, jointly and severally, by these presents—

Yet upon these conditions: The said James Alexander and Charles W. Trousdale having petitioned the said Muhlenburgh circuit court, in Muhlenburgh & the State of Kentucky, for a removal of a certain cause therein pending, wherein R. H. Brown, &c., are plaintiffs and Alexander Tinsley & others, with said petitioners, are defendants, to the circuit court of the United States for the sixth circuit & district of Kentucky, at Louisville, now, if the said petitioners shall enter into the said circuit court of the United States on first day of its next session a copy of the record in said cause and shall well and truly pay all costs that may be awarded by said circuit court of the United States if said court shall hold that said cause was improperly removed thereto, then — obligation shall be void; otherwise to remain in full force and virtue.

Witness our hands this 19th day of August, 1885.

CHAS. W. TROUSDALE.
JAMES ALEXANDER.
S. M. BERNARD.

By RODMAN & BROWN, *Att'ys.*

141 STATE OF TENN., *Sumner County.*

Personally appeared before me, G. N. Guthrie, a notary public in and for said State and county, Chas. W. Trousdale, and acknowledged that he executed the foregoing instrument.

Done at office in Gallatin this Aug. 19th, 1885.

[Seal G. N. Guthrie, Notary Public, Sumner County, Tenn.]

G. N. GUTHRIE, *N. P.*

STATE OF KENTUCKY, *County of Jefferson,* ss:

S. M. BANARD says that he is the same person who signed the foregoing bond; that he is a citizen and resident of the county of Jefferson & Commonwealth of Kentucky; that he is the owner of unincumbered real estate in said county of Jefferson of the value of more than two thousand dollars, and that he is worth more than two thousand dollars after the payment of his debts and deducting all —.

S. M. BENARD.

Sworn to before me by S. M. Benard this 20th day of August, 1885.

E. H. CONN,
D. C. Jeff. Co. Ct., Ky.,
For GEO. H. WEBB,
Clerk Jeff. Co. Ct., Ky.

Endorsement by cl'k: Filed August 21st, 1885. Att.: Geo. W. Townes, cl'k.

142 Muhlenburgh Circuit Court.

R. H. BROWN & Others, Plaintiffs,
against
ALEXANDER TINSLEY, Sheriff, &c., Defendants.

AUGUST 21ST, 1885.

The defendants Charles W. Trousdale and James Alexander this day presented to the court their joint petition for a removal of this action to the United States circuit court for the sixth circuit & district of Kentucky, and at the same time presented their bond, with S. M. Benard as surety thereto, and thereupon said defendants, Chas. W. Trousdale and James Alexander, moved the court to order their said petition for removal to be filed in this action and to accept and approve their said bond and to order the transfer of this action to the United States circuit court for the sixth circuit and district of Kentucky.

Endorsement by cl'k: Filed August 21st, 1885. Att.: Geo. W. Townes, cl'k.

Affidavit of Robert Glenn and Geo. D. Park.

In Muhlenburgh Circuit Court.

R. H. BROWN & Others
vs.
ALEXANDER TINSLEY & Others. } In Equity.

Robert Glenn and Geo. D. Park, affiants, state they were made parties defendant in said cause without their knowledge or consent; that no collusion existed between affiants and the plaintiffs in said cause before the filing — their petition & no collusion exists
143 now, & the affiants are holders and owners of the bonds of said county in good faith, and that the statement alleging affiants' collusion in the petition for a removal of this cause to the United States circuit court with the plaintiffs is not true.

Affiants state their action in this cause is based on their own judgment as to the justice of the same, and believing that the justice is with the plaintiffs they do not choose to resist the plaintiffs' petition.

ROBERT GLENN.
GEO. D. PARK.

Subscribed and sworn to before me by Robert Glenn & Geo. D. Park this August 21st, 1885.

Q. B. COLEMAN, *P. J. S. C.*

Endorsement by clerk: Filed Aug-st 22, 1885. Att.: Geo. W. Townes, cl'k, by W. H. Reynolds, D. C.

Affidavit of C. L. Morehead.

Muhlenburgh Circuit Court.

R. H. BROWN, &c., Plaintiffs,
against
ALEX. TINSLEY, &c., Defendants. } Affiant.

The affiant, C. L. Morehead, states that he was the agent of the funding board of Muhlenburgh county to compromise & refund the bonded debt of said county on certain bonds issued on behalf of the county to the Elizabethtown & Paducah Railroad Company, and from the information he has obtained from Mr. Green, his co-agent, he believes that a majority of the new bonds of said county are owned and held by citizens of the State of Kentucky.

August 21st, 1885.

144 C. L. MOREHEAD.

Subscribed and sworn to before me by C. L. Morehead this 21st day of August, 1885.

Q. B. COLEMAN, *P. J. S. C.*

Endorsement by clerk: Filed August 22nd, 1885. Att.: Geo. W. Townes, cl'k, by W. H. Reynolds, D. C.

Affidavit of Louis Jones.

In Muhlenburgh Circuit Court.

R. H. BROWN *et al.*
vs.
ALEX. TINSLEY *et al.* } In Equity.

Louis Jones, the affiant, states that he has opportunity for knowing the professed owners of the bonds of Muhlenburgh county, Ky., issued to the Elizabethtown & Paducah R. R. Co. This opportunity resulted from the fact that he was a member of the General Assembly of Kentucky from which the bondholders aforesaid sought legislation on their behalf, and also from the fact that he was a justice of the peace of said Muhlenburgh county and was proceeded against on behalf of said bondholders for the purpose of compelling a levy to satisfy interest on the said bonds. He states, from all the facts, expressions, and disclosures in their affairs, he is satisfied that at that time about three-fourths of the said bonds were held and owned by residents of the State of Kentucky, and it is his conviction now that the owners of the said bonds are, at least to the extent of two-thirds, residents of Kentucky.

145

LOUIS JONES.

Subscribed and sworn to before me by Louis Jones August 21st, 1885.

Q. B. COLEMAN, *P. J. S. C.*

Filed Aug. 22nd, 1885.

GEO. W. TOWNES, *Cl'k*,
By W. H. REYNOLDS, *D. C.*

Came the defendant Robert Glenn and filed the following answer, viz:

Answer of Defendant Rob't Glenn.

Muhlenburgh Circuit Court.

R. H. BROWN, &c., Plaintiffs,
against
ALEX. TINSLEY, Sheriff, &c., Defendants. } Answer Robert Glenn.

The defendant Robert Glenn, the holder of old bonds of Muhlenburgh county mentioned in the petition herein, says that he has no defence to make to the petition herein, and asks that the motion to dissolve the injunction and the demurrer be withdrawn so far as he is or may be a party thereto, and asks that he may be protected from the payment of any cost incurred in this action.

ROBERT GLENN.

Subscribed and sworn to before me by Robert Glenn August 21st, 1885.

JNO. T. YOUNG, *Ex. M. C.*

Endorsement by clerk: Filed Aug. 22nd, 1885. Att.: Geo. W. Townes, cl'k.

146 Came def't Geo. D. Park and filed the following answer, viz:

Muhlenburgh Circuit Court.

R. H. BROWN, &c., Pl'ffs,
vs.
ALEX. TINSLEY, Sheriff, &c., Def'ts. } Answer of Geo. D. Park.

The defendant Geo. D. Park, the holder of one — the compromise bonds mentioned in plaintiffs' petition herein, says that he has no defence to make to the petition herein against him, and asks that the motion to dissolve the injunction and the demurrer herein be withdrawn so far as he is concerned or so far as he may be a party thereto, and that he be protected from the payment of any costs incurred in this action.

GEO. D. PARK.

Subscribed and sworn to before me this August 21st, 1885.

J. T. YOUNG, *Ex. M. C.*

Endorsement by clerk: Filed August 22, 1885. Att.: Geo. W. Townes, cl'k, by W. H. Reynolds, D. C.

Order Removing to U. S. Cir. C't, 6th Dist. Ky., at Louisville.

Muhlenburgh Circuit Court.

R. H. BROWN, &c., Plaintiffs,
against
ALEXANDER TINSLEY, Sheriff, &c., Defendants. } Order of Removal.

The defendants Chas. W. Trousdale and James Alexander having, upon their separate petitions herein, been made by the
147 court parties defendant to this action, and said defendants, Trousdale & Alexander, having presented to the court in this action their joint petition for a removal of this action from this court into the United States circuit — for the sixth circuit and district of Kentucky, at Louisville, Kentucky, and having, with their said petition, tendered their bond, with S. M. Penard as surety, as required by the act of Congress in such cases provided; and the court being now sufficiently advised, it is considered and adjudged that said petition for removal be filed of record; that the said bond be and is accepted and approved by the court, and that, in pursuance of said petition, this action is transferred from this court & removed into the United States circuit court for the sixth circuit and district of Kentucky, at Louisville, Kentucky, and the clerk of this court is ordered

to make out a correct and complete transcript of the record and proceedings in this action, including —, & to certify the same under seal for use in said United States circuit court. Pending the motion of defendants Trousdale and Alexander for a removal of this cause, the plaintiffs tendered the affidavit of Robert Glenn, Geo. D. Park, C. L. Morehead, and Louis Jones, and offered to read them on the hearing of the motion to transfer, which the court allowed to
148 be done. The defendants Robert Glenn & Geo. D. Park filed their separate answer to the petition.

Endorsement of clerk: Filed August 22nd, 1885. Att.: Geo. W. Townes, cl'k, by W. H. Reynolds, D. C.

STATE OF KENTUCKY, *Muhlenburgh County,* } *sct:*

I, Geo. W. Townes, clerk of the circuit court for the county and State aforesaid, hereby certify that the foregoing 161 pages contain a true and complete copy of the record, including processes, pleadings, and orders and proceedings had in the action of R. H. Brown & others, plaintiffs, against Alexander Tinsley, sheriff of Muhlenburgh county, Ky., and others, defendants, pending in the Muhlenburgh circuit court, as same remains on file and of record in my office.

Given under my hand and seal as clerk of said court this 22nd day of August, 1885.

[SEAL.] GEO. W. TOWNES, *Cl'k.*

Motion of Compl'ts to Remand to State Court.

And on another day of said term, to wit, on Saturday, September 19th, 1885, came the complainants, by T. W. Brown, their counsel; came also the defendants Alexander and Trousdale, by Rod-
149 man & Brown, their counsel. The complainants, by their said counsel, moved the court to remand this cause to the Muhlenburgh circuit court, from whence it came.

Grounds in Support of Motion to Remand.

And on another day of said term, to wit, on Monday, September 21st, 1885, this day appeared the plaintiffs (complainants) and the defendants, by their respective solicitors, and the said plaintiffs (complainants) filed grounds in support of their motion to remand, and which are as follows:

First. On the face of the record and matters appearing in the record of this cause the defendants, nor either of them, had the right to have this cause removed from State court, and the removal of the same is without right and this honorable court had not jurisdiction of this cause.

Second. The two defendants, to wit, James Alexander and Charles Trousdale, on whose application this cause was removed, came into the cause collusively and fraudulently by a conspiracy with bond-

holders, who are citizens of the State of Kentucky, to allow the use of their names as defendants (the said Alexander and Trousdale assuming to be bondholders and citizens of Tennessee) in order to escape the jurisdiction of the State courts and make a pretended and feigned ground of removal. The said Alexander &
150 Trousdale are not *bona fide* defendants in this cause, and really and in fact are not conducting the defense, but they are in fact only nominal defendants, allowing the use of their names by bondholders who are citizens of the State of Kentucky and who are really conducting the defense of this cause; and thereupon the solicitor for the plaintiffs (complainants) further moved the court to allow them to have a discovery from the said Alexander & Trousdale as to matters set out in the second ground of their motion to remand this cause, and to that end for leave to file certain interrogatories herein addressed to the said parties, to be answered separately by each of them, which interrogatories were to the court and adversary counsel shown, and, by the court being approved, it is ordered that said interrogatories be filed, and that said Alexander and Trousdale do within twenty-five days answer the same, & defendants Alexander and Trousdale may have five days within which to file cross-interrogatories herein. Thereupon the hearing of the motion to remand is continued to the 19th day of October ensuing. The complainants excepts to so much of the above order as gives leave to file cross-interrogatories.

151 The interrogatories above referred to are as follows, to wit:

Interrogatories to Defendants.

In the U. S. Court (Circuit), District of Kentucky.

R. H. BROWN *et al.*
vs.
ALEXANDER TINSLEY *et al.*

Interrogatories propounded to James Alexander and Charles W. Trousdale to be answered by the said Alexander and Trousdale respectively and separately, the answers to the same to be used by the complainants (plaintiffs) herein on their motion to remand this cause to the circuit court of Muhlenburgh county, Kentucky, if the said complainants (plaintiffs) so desire.

Interrogatory No. 1. How long have you resided in the State of Tennessee? If you are a resident of the said State give the name of the county and town or city in the said State where you reside.

Interrogatory No. 2. When did you first hear of the institution of this suit and from whom? If the information was given by letter produce the letter and make it a part of your answer to this question. If you cannot produce the original letter give your
152 reason for not doing so and produce a copy. If you have not the original letter, who has the same, and did you put it out of your possession? If you did so put it out of your possession, was not this done by you to avoid the production in this cause? If

you cannot give the original letter nor copy, state the contents. If the information as to the pendency of this suit was not communicated by letter, but in a personal interview, state what was said by you and the party communicating with you in the interview. Give the whole conversation. State what was the purpose of the party having the interview & where was it. Where did the party or parties live who communicated with you as to this suit—whether it was done by letter or by personal interview? Of what State were they citizens? What was and is his, her, or their business? Did he, she, or they own any bonds of Muhlenburgh county purporting to be issued by that county in payment *ovr* stock purporting to have been subscribed to the Elizabethtown and Paducah Railroad Company? If not owning any of said bonds did he or they represent as agent, attorney or otherwise, those who did own said bonds, and where did those bondholders reside whom he or they repre-
153 sented in dealing with you in regard to this suit?

Interrogatory No. 3. Are you real-y in good faith a citizen of the State where you claim to be, to wit, Tennessee, or are you merely temporarily in the said State for the purpose of playing in this case the role of citizen of another State in order to escape the jurisdiction of the Kentucky courts for the benefit of bondholders of the bonds before mentioned, who are residents and citizens of the State — Kentucky, or for your own benefit? Have you voted in the State of Tennessee? What is your age? What rights of citizenship have you ever exercised in the State of Tennessee? Where — whence did you remove when you went into the State of Tennessee, & when?

Interrogatory No. 4. Do you pay any of the fees to counsel for the defence of this cause? Have you obligated yourself to pay any part of the fees of counsel in this cause? If you have, to what amount? Who are your attorneys in this cause & when did you employ them? Be specific in answering this last clause of the interrogatory.

Interrogatory No. 5. What — all the numbers and denomi-
154 nation of the bonds you hold, & are these bonds of those originally issued, or have these bonds so held by you been issued under the funding act? Where were those bonds when you swore to and filed your petition to become a party defendant to this cause? If not in your possession, then in whose possession were they, and where—(*i. e.*) in what State? How did the said bonds happen not to be in your possession at the time above mentioned? For what purpose were they out of your possession?

Interrogatory No. 6. Is it not a fact that you were applied to by or on behalf of the holders of the bonds of Muhlenburgh county, heretofore referred to in third interrogatories, who reside in and are citizens of Kentucky, for the use of your name in this cause in order to remove the same from the State court, and that for the use of your name for this purpose you were to be relieved from the payment of counsel fees and of costs or indemnified against the same by or on behalf of the said bondholders, citizens of the said State of Kentucky; and was not your appearance in this cause made collusively with the said bondholders, citizens of the said State, to

enable them to avoid the jurisdiction of the State courts; and was not this appearance made at the instance and request of or on
155 behalf of these bondholders? Would you have appeared in this cause except by the request of or made on behalf of these bondholders and on representations made by or on behalf of the said bondholders that you should be relieved of all costs and expenses in the defense of this suit?

Interrogatory No. 7. Would you have undertaken to be the only defending bondholders in this cause if the bondholders who are citizens of Kentucky had not procured you to make the defense and agreed to relieve you of expenses and costs or indemnified you against the same?

Interrogatory No. 8. When did you become the owners of the bonds you mention in your petition? Was it before or after the petition of this suit? What did you pay for them, and from whom did you *did you* get them? Are you related in any way to any of the bondholders who are citizens of Kentucky? If you are, state who it is. Are not nearly all the bonds issued by Muhlenburgh county held by citizens of Kentucky? Did you not get the bonds you profess to hold for the purpose of enabling you to play the part of a citizen of another State in and of the citizen bondholders of Kentucky?

156 Interrogatory No. 9. Are your answers to the foregoing questions made fully, candidly, and without evasion and without instruction or advice from any one? If you say that you in any way had instruction or advice from any one, say from whom.

Motion of Defendants to Dissolve Injunction.

And at a term of our said court held for its October term, A. D. 1885, to wit, on Monday, October 19th, A. D. 1885, the defendants, Alexander Tinsley, sheriff of Muhlenburgh county; John H. Morton, presiding judge of the Muhlenburgh county court; James Alexander and Charles W. Trousdale, came and file- a copy of a notice served upon A. J. Keller, attorney for complainants, and complainants, R. H. Brown, J. W. Moores, W. E. Glenn, John Kittinger, Jr., & R. G. Thomas, and move the court to make and enter an order herein dissolving the injunction granted in this action by John R. Grace, judge of the Muhlenburgh circuit court; and this motion and the motion to remand this case to the State court is set for hearing on the 9th day of November next.

The notice above referred to is as follows:

Notice of Motion.

United States Circuit Court, 6th Circuit and District of Kentucky.

R. H. BROWN and Others, Plaintiffs,
vs.
157 ALEX. TINSLEY and Others, Defendants.

A. J. Keller, attorney for the complainants in this action, R. H. Brown, J. W. Moores, W. E. Glenn, John Kittinger, Jr., R. Y. Thomas, and W. A. Dukes, plaintiffs and complainants herein:

You are hereby notified that on the 19th day of October, 1885, at the hour of 10 o'clock a. m., or as soon thereafter as counsel can be heard, the defendants Charles W. Trousdale and James Alexander will move the court, at the United States circuit court-room, in the city of Louisville, Kentucky, for an order dissolving the injunction granted by the judge of the Muhlenburgh circuit court. We will make said motion in the names of Alexander Tinsley, sheriff, and John H. Morton, presiding judge, of the Muhlenburgh county court, as well as in our own names.

Dated Oct. 1st, 1885.

CHARLES W. TROUSDALE,
JAMES ALEXANDER,
By WM. LINDSAY,
M. C. HAY,
RODMAN & BROWN, *Attorneys.*

STATE OF KENTUCKY, *Muhlenburgh County,* } *sct:*

The affiant, W. E. Roark, says that he executed this notice on the within-named A. J. Kettar, attorney for the complain-
158 ants in the within-mentioned action, R. H. Brown, W. E. Glenn, & R. Y. Thomas, by delivering to each of them a copy of this notice on the 8th day of October, 1885; and he says that he executed this notice on John Kittinger, Jr., by delivering to him a copy of this notice on the 9th day of October, 1885; and that he executed this notice on J. W. Moores by delivering a copy of this notice to his attorney, A. J. Kellar, on the 8th day of October, 1885, the said J. W. Moores being absent from his usual place of abode, and the said A. J. Kellar is over 16 years of age, & has his usual place of abode with J. W. Moores. This October, 1885.

W. E. ROARK.

Subscribed and sworn to before me by W. E. Roark this 15th day of October, 1885.

M. J. ROARK,
U. S. Com'r, District of Kentucky.

STATE OF KENTUCKY,
Muhlenburgh County.

The affiant, W. H. Schaefer, says that he executed the within notice on the within-named W. A. Dukes by delivering to him a copy of this notice on the 13th day of October, 1885. This October 15th, 1885.

W. H. SCHAEFER.

Subscribed and sworn to before me by W. H. Schaefer this the 15th day of October, 1885.

M. J. ROARK,
U. S. Com'r, District of Kentucky.

159 *Motion to Remand Overruled & Order Dissolving Injunct.*

And on another day of said term of our said court, to wit, it is ordered the motion of complainants to remand this cause to the circuit court of Muhlenburgh county, Commonwealth of Kentucky, be, and the same is, overruled.

To which ruling and judgment of the court the complainants, by their counsel, except.

And it is further ordered and adjudged that the temporarty or provisional order by John R. Grace, judge of the Muhlenburgh circuit court, on the 23rd day of July, 1885, be, and the same is, dissolved upon the face of the petition and exhibits filed therein.

To which ruling and judgment of the court the complainants, by their counsel, except.

And afterwards, on Monday, December 7th, 1885, came the defendants Charles W. Trusdale and James Alexander, by their counsel, and filed their separate answers herein. Came also the complainants, by their counsel, and filed their replication to said answers.

The answer of Charles W. Trusdale is as follows:

Answer of Charles W. Trusdale.

United States Circuit Court for the 6th Circuit and Kentucky District.

R. H. BROWN, W. A. DUKES, J. F. MORRIS, and Others, Complainants,
vs.
160 ALEXANDER TINSLEY, Sheriff; J. H. MORTON, County Judge of Muhlenburgh County; Martin Kittinger and Others, Members of the Funding Board of Muhlenburgh County; James Alexander and Charles W. Trousdale, Defendants.

The answer of Charles W. Trousdale, one of the defendants, to the bill of complaint of R. H. Brown and others, complainants.

This defendant, now and at all times hereafter saving and reserv-

ing unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in said complainants' said bill of complaint contained, for answer thereto or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto—this defendant, answering, says that he admits, on information and belief, the incorporation of the Elizabethtown and Paducah Railroad Company, approved February 24th, 1868; the various acts incorporating the Elizabethtown and Paducah Railroad Company; the election held on the 30th day of May, 1868; the various orders of the Muhlenburgh county court in relation
161 to said election and the subscription to the capital stock of the Elizabethtown and Paducah Railroad Company; the passage of the act entitled "An act to authorise and empower the county of Muhlenburgh to compromise and fund its outstanding bonded indebtedness, issue bonds, and levy and collect taxes to pay the same," approved March 18th, 1878.

But this defendant denies, on information and belief, that the act of February 24th, 1868, is complicated or obscure or that the same is obnoxious to section 37 of article 2 of the constitution of this State. He denies that the polls, as well as the certificate of the officers holding the election, utterly failed to show the question asked to be submitted. He denies that the certificate executed by the county judge and clerk was totally unauthorized by the returns made to them by the officers holding the election. He denies that the notice that the people of Muhlenburgh county had of said election was utterly inadequate for an intelligent apprehension of the act of February 24th, 1868, or for any possible knowledge of what it was their interest to do under said act. He denies that fully one-third of said county and the qualified voters thereof did not know of the election and had no information as to the question submitted. He
162 denies that there *was* over 2,300 qualified voters in Muhlenburgh county on the 30th day of May, 1868. He denies that there was anything unfair, unjust, or oppressive in the manner of holding said election. He denies that the voters of said county could have no chance to vote because the notice given was too short and too limited for the tax-payer to advise himself of the act and take counsel as to his interest. He denies that the said act itself is plainly or at all masked by a fraudulent purpose to surprise the people of the various counties into subscription to suit the pleasure of said corporation. He denies all and singular the allegations and insinuations as to fraudulent designs, as to the intention of fraud in the obtension of said act of incorporation of the Elizabethtown and Paducah Railroad Company, which will hereinafter be known and called "the railroad company." He denies that many votes were taken fraudulently at the voting places in said county, or that many were returned who never voted. He denies that "the county court" contemplated by said act was any other court than the county judge. He denies that $400,000 was almost equal at that time to one-fourth of the assessable property values of said county.
163 He denies that the act referred to as the "funding act," ap-

proved March 18th, 1878, was obtained by the holders of the bonds issued in payment of said pretended subscription, or that the same was obtained by a part of said bondholders and solely in their interest and behalf.

He denies that nothing was done towards the execution of said funding act from the date of its passage until the spring of the year 1885. He denies that the sum of $140,000 of the old bonds has been funded for the amount of $115,000. He denies that by the terms of said funding act all of the indebtedness of the county should have been compromised before any compromise should take effect. He denies that the funding board has assumed the power to levy or has levied a tax to pay interest due and to become due on the said compromise bonds or any other bonds. He denies that the sheriff of said county is about to levy any tax assessed by said funding board. He denies that there was no action on the part of the magistrates of Muhlenburgh county approving the said election of May 30th, 1868, the results of the same, the issuing of the bonds, or the levying of taxes to pay interest thereon. He denies that there was no acquiescence by silence on the part of the magistrates of said county as to any of the things above named; but defendant
164 alleges, on information and belief, that on two occasions, as will hereinafter be shown, the justices of the peace of said county, sitting as a county court, did recognize the issuance and validity of said bonds.

Further answering, this defendant says that he is owner and holder of bonds of said Muhlenburgh county to the amount of $7,000.00 of the face value and denominations as follows, to wit:

One of said bonds, being No. 129, with the coupons attached and endorsements thereon, reads in words and figures as follows, to wit:

165 100. *New Bond.* 100.

UNITED STATES OF AMERICA, *County of Muhlenburgh, State of Kentucky.*

No. 129.

Twenty years after date the county of Muhlenburgh, in the State of Kentucky, promises to pay to the bearer the sum of one hundred dollars, with interest thereon at the rate of six per cent. per annum, payable semi-annually upon presentation of the proper coupons hereto attached, the principle and interest being payable at the Bank of America, in the city of New York, and to secure the payment of which the property and credit of the county are pledged: Provided, that at any time after five years from date hereof the said county shall have the right to pay, call in, and redeem this bond, together with the coupons hereto attached. In testimony whereof the judge of the said county of Muhlenburgh has hereunto set his hand and affixed the corporate seal of said county this the first day of July, 1878, and caused the same to be attested by the signature

hereto of the county clerk, who has also signed the coupons hereto attached.

(Signed) J. H. MORTON,
County Judge.

[SEAL.] W. T. STILES,
County Clerk.

$3.00. *Coupon No.* 36.

The county of Muhlenburgh, in the State of Kentucky, will pay to the bearer three dollars at the Bank of America, in the
166 city of New York, on the 1st day of July, 1896, being semi-annual interest on county bond No. 129, dated the 1st day of July, 1878.

(Signed) W. T. STILES, *Clerk.*

$3.00. *Coupon No.* 37.

The county of Muhlenburgh, in the State of Kentucky, will pay to the bearer three dollars at the Bank of America, in the city of New York, on the 1st day of January, 1897, being semi-annual interest on county bond No. 129, dated the 1st day of July, 1878.

(Signed) W. T. STILES, *Clerk.*

On the back of said bond No. 129 is the following indorsement in words and figures, to wit:

COUNTY OF MUHLENBURGH.

$100 *Six Per Cent. Interest Bond.*

This bond is issued as authorized by an act of the Kentucky Legislature approved March 18, 1878, entitled "An act to authorize and empower the county of Muhlenburgh to compromise and fund its outstanding bonded indebtedness, issue bonds, and levy and collect taxes to pay the same."

(Signed) J. H. MORTON, *Judge.*

And the other bonds and coupons so held by this defendant are of like tenor and effect with said bond and coupons above copied herein. The coupons are all attached to said bonds, except
167 the coupons due and payable July 1st, 1885, which were detached for collection, but this defendant still holds the same. This defendant says that the bonds above named were received by him from the funding board of the county of Muhlenburgh in exchange for bonds and coupons of the face value of $22,000.00, and that as to the bonds held by him he alleges that he was the *bona fide* holder for value; that he surrendered to said funding board, in exchange for said bonds now held by him, bonds, with coupons thereto attached, which, as he is informed and believes, the said funding board caused to be destroyed; but he says that he was the *bona fide* owner for value of the said bonds so surrendered; that he purchased and paid for said bonds so surrendered eighty-five per centum of

the face value thereof; that said old bonds so surrendered were purchased by him about the year 1871; that this defendant collected and the said county of Muhlenburgh paid the coupons due for interest on said bonds regularly until the — day of ——, 1874, after which time said county failed to pay the interest on said bonds, and this defendant held the said bonds, with the coupons thereon, until the — day of ——, 1885, at which time he surrendered his old bonds and received in exchange therefor the bonds now held by
168 him, and he so held them at the time of the commencement of this action.

This defendant says that he cannot now give the number and denomination of all of the old bonds held and surrendered by him, as aforesaid, but he says that each one of said bonds was of the tenor and effect, and, except as to the number and amount, was in words and figures, with the coupons and endorsements thereon, as follows, to wit:

100. *Old Bonds.* 100.

UNITED STATES OF AMERICA, *State of Kentucky, County of Muhlenburgh.*

Number 1352.

For the Elizabethtown and Paducah railroad, twenty years after date, the county of Muhlenburgh, in the State of Kentucky, promises to pay to the bearer the sum of one hundred dollars, with interest thereon at the rate of seven per cent. per annum, payable semi-annually upon presentation of the proper coupons hereto attached, the principle and interest being payable at the Bank of America, in the city of New York, and to secure the payment of which the property and credit of the county are pledged.

In testimony whereof the judge of said county of Muhlenburgh has hereunto set his hand and affixed the corporate seal of said county this the first day of March, 1869, and caused the same to be attested by the signature hereto of the county clerk, who has
169 also signed the coupons hereto attached.

(Signed) S. P. LOVE,
County Judge.

[SEAL.] THOS. BRUCE,
County Clerk.

$3.50. *Coupon* 36.

The county of Muhlenburgh, in the State of Kentucky, will pay to the bearer three dollars $\frac{50}{100}$ at the Bank of America, in the city of New York, on the 1st day of March, 1887, being semi-annual interest on county bond No. 1352, dated the first day of March, 1869.

(Signed) THOS. BRUCE, *Clerk.*

$3.50. *Coupon* 37.

The county of Muhlenburgh, in the State of Kentucky, will pay to the bearer three dollars $\frac{50}{100}$ at the Bank of America, in the city of New York, on the 1st day of September, 1887, being semi-annual interest on county bond No. 1352, dated the 1st day of March, 1869.

(Signed) THOS. BRUCE, *Clerk.*

On the back of said bond 1352 is the following endorsement, in words and figures, to wit:

County of Muhlenburgh for Elizabethtown and Paducah railroad.

$100 *Seven Per Cent. Interest Bond.*

This bond is issued as authorized by an act of the Kentucky Legislature, approved February 24, 1868, entitled "An act to amend
170 the charter of the Elizabethtown and Paducah Railroad Company."

(Signed) S. P. LOVE, *Judge.*

That the coupons on the old bonds so surrendered were for interest at the rate of seven per cent. per annum, and the amount of all the bonds and coupons of the old bonds surrendered by this defendant amounted to about the sum of $22,000.00, for which this defendant received in exchange the bonds herein first above described of the face value of $7,000.00; and this defendant is informed and believes and so states that all bonds that have been compromised and surrendered to said funding board have been compromised and surrendered upon the same conditions as in the case of this defendant. This defendant says, on information and belief, that the said railroad company, on the — day of ——, 1868, applied to the Muhlenburgh county court, requesting said county court to submit to the qualified voters of said county the question as to whether or not said county should subscribe for $400,000 of the capital stock of said railroad company, to be paid for in bonds of the county; that said county court did order an election to be held at the several voting places in said county on the 30th day of May, 1868, and ap-
171 pointed judges and other officers necessary to hold said election; that the sheriff of said county gave notice to the officers appointed to hold said election in the same manner as was then provided by law in regard to other elections; that elections were held in each of the voting places of said county on the said 30th day of May, 1868, and that the respective persons who acted as sheriffs at the several precincts returned to the clerk of the county court within three days after such election the poll books of their respective precincts, and the judge and county clerk of said county counted the vote, and the vote was as appears upon the copies of the poll books filed with complainants' bill, the whole number of votes cast being 1,320, which was more votes than at that time were usually cast at general elections. For instance, at the general election in August,

1867, there *was* cast in the election of representative to the Legislature 1,224 votes; that in the general election in 1869 for representative in the Legislature there were cast 1,228 votes, and that on the question of school tax of fifteen cents on the one hundred dollars of property there were cast 1,249 votes. Said result was declared by the said officers, and the vote was ordered to be entered and the vote was entered upon the records of said Muhlenburgh county
172 court, and the subscription was thereupon by said court ordered to be made by the clerk on behalf of said county; that at the November term, 1868, of said Muhlenburgh county court, to wit, on the 1st day of December, 1868, the county court of Muhlenburgh county, composed of S. P. Love, presiding judge, and Justices Joseph Adcock, D. B. Roll, J. H. Morton (now county judge), T. R. Clark, J. P. Hendricks, E. G. Neel, J. J. Wood, W. R. Casey, H. C. Newman, John M. Williams, S. M. Eaton, and S. J. Hunt, met, and an order was entered as follows:

"Ordered that S. P. Love be, and he is hereby, appointed to have the bonds of Muhlenburgh county printed for $400,000 in the capital stock of the Elizabethtown and Paducah Railroad Company in accordance with the order calling election to vote said amount, if such bonds be necessary."

And afterwards, at the November term, 1869, of said Muhlenburgh county court, on the 1st day of December, 1869, the said county court, composed of S. P. Love, presiding judge, and Justices J. H. Morton, T. R. Clark, Joseph Adcock, A. J. Lyon, S. J. Hunt, D. B. Roll, John M. Williams, J. P. Hendricks, and S. M. Eaton, allowed and ordered to be paid a claim in favor of Thomas
173 Bruce, clerk of the county court of said Muhlenburgh county, for seals on the said railroad bonds for the sum of $1,150.00. This defendant files herewith as a part hereof a duly certified copy of both of said orders above described, and marks the same "A X," and alleges that both of said orders referred to the bonds issued under the said act of February 24th, 1868, of which issue the bonds surrendered by this defendant as herein set out were a part; that after the date of said order of December 1st, 1868, and in accordance therewith the said S. P. Love, mentioned in said order, who was then the presiding judge of the Muhlenburgh county court, caused the bonds to be printed, dated the 1st day of March, 1869, payable to bearer twenty years after date, with coupons attached, making the interest on said bonds seven per cent. per annum, payable semi-annually, to the amount of $400,000, in denominations of one hundred, five hundred, and one thousand dollars, of which series of bonds those surrendered by this defendant as above described formed a part.

That the said Muhlenburgh county court caused said $400,000 in bonds, after they had been signed by S. P. Love, county judge, and Thomas Bruce, county clerk, and the seal of the county at-
174 tached thereto, to be delivered to the said Elizabethtown and Paducah Railroad Company, and received in exchange therefor certificate No. 3 for four thousand shares of one hundred dollars each in the capital stock of said Elizabethtown and Paducah Rail-

road Company, which certificate was issued by said company to said county on the 26th day of November, 1869, signed "Samuel B. Thomas," president, and "A. A. Gordon, secretary," and which certificate reads in words and figures as follows, to wit:

Number 3. *Certificate of Stock.* 4,000 shares.

UNITED STATES OF AMERICA, *State of Kentucky.*

The Elizabethtown & Paducah Railroad.

Shares, $100 each. Shares, $100 each.

This certifies that Muhlenburgh county is entitled to four thousand shares of the capital stock in the Elizabethtown and Paducah Railroad Company, transferable in person or by attorney on the books of the company at their office in Louisville.

Witness the seal of the said company and the signatures of the president and secretary, Louisville, Ky., 26th day of November, 1869.

(Signed) SAM'L B. THOMAS, *President.*
[SEAL.] A. A. GORDON, *Secretary.*

And said certificate of stock was delivered to and remained
175 in the possession of the treasurer of the board of sinking fund commissioners of said Muhlenburgh county, who had been appointed by the said Muhlenburgh county court previous thereto, under the provisions of section 10 of the act of February 24th, 1868, aforesaid, and the said certificate of stock still remains in the possession of one of the members of said board; that after said subscription was made said railroad company built and completed a railroad through the whole length of Muhlenburgh county within one mile of Greenville, the county-seat, the length of said railroad in Muhlenburgh county being twenty-six miles. Said railroad was built and completed by said railroad company its whole length from Elizabethtown to Paducah on the — day of ——, 1871, and said road has ever since that time been run and operated its whole length; that the said twenty-six miles of track and other property appurtinent thereto in Muhlenburgh county is assessed at a valuation of $260,000, and upon that valuation the successor of said railroad company now pays taxes to said county of Muhlenburgh for county revenue purposes. This defendant says that after the delivery of said bonds to said railroad company that the said company sold the same in open market, and that
176 this defendant purchased the bonds surrendered by him, as heretofore described, without any notice of any alleged defects, irregularities, or frauds, if any there were, in the complainants' bill of complaint set out. This defendant says, on information and belief, that the said county of Muhlenburgh, by its board of commissioners of the sinking fund before mentioned, at all meetings of the stockholders of said railroad company, from the time of said subscription of stock until said Elizabethtown and Paducah rail-

road passed into the hands of a receiver, in April, 1875, voted and controlled said four thousand shares of stock in all the meetings of the stockholders of said railroad company in the election of officers thereof, and on all other matters that came before the said meetings of the said stockholders of said company; that to pay the interest on said $400,000 of bonds the county court of Muhlenburgh county levied a tax upon all the property subject to taxation under the general laws of the State of Kentucky for the years 1869, 1870, 1871, 1872, and 1873, and all the coupons on said bonds for those years were paid out of said collection of taxes so levied by the sheriff
177 of Muhlenburgh county, and which taxes for said years were paid by all owners of taxable property in said county; that in the year 1874 the county court of Muhlenburgh county refused to levy taxes to pay the coupons on said bonds, and no tax was levied for that year; that in the year 1876 all of the justices of the peace for said county of Muhlenburgh resigned their offices to prevent being compelled to make a levy to pay the interest on said bonds, and since said year of 1876 there have been no justices of the peace in commission in said county, and there were none in commission at the time of the passage of the funding act hereinafter set out, and there are now no justices of the peace in commission in said county; that at the December session, 1877, of the General Assembly of the Commonwealth of Kentucky the people of Muhlenburgh county, through their representative in said Assembly, procured the passage of said funding act set out in complainants' bill of complaint and approved March 18th, 1878.

This defendant says, on information and belief, that after the passage of the funding act of March 18th, 1878, set out in complainants' bill of complaint, at the general election held
178 in said county in May, 1878; in August, 1878; in August, 1880, and in August, 1884, the last three being days fixed by law for the election of constables, there was elected by a majority of the qualified voters of said county voting at said election a funding board, consisting of a member from each justice's precinct of said county of Muhlenburgh, and that said members thereof were duly qualified as required by the provisions of said act; that the first board elected under the provisions of said act funded of said old issue of bonds five thousand dollars principal and interest by the issue of fifteen hundred dollars of the new bonds, and thereupon the county court of said county levied a tax of ten cents on each one hundred dollars' worth of property subject to taxation under the general laws of the Commonwealth of Kentucky to pay the interest coupons of said fifteen hundred dollars of funded bonds and to provide a sinking fund for the redemption of said bonds, which tax was collected by the sheriff of said county, and which tax was paid by all the owners of taxable property in said county; that the funding board of said county, composed of the persons as set out in complainants' bill of complaint, were duly elected and qual-
179 ified and funded of the old bonds as follows: The whole amount, including principal and interest, $204,000, for which they have issued and given in exchange new bonds of the face value

of $61,000.00, which series of new bonds the bonds now held and owned by this defendant and hereinbefore set out form a part. This defendant says, on information and belief, that after the funding of said bonds and the execution and delivery of the new bonds the funding board aforesaid certified the facts thereof and concerning the same to the county court of Muhlenburgh county, which county court was then composed of the presiding judge alone, there being no justices in commission in said county, and upon the request of said funding board the said county court of Muhlenburgh county levied the tax complained of in complainants' bill of complaint, which levy was made by said Muhlenburgh county court and not by said board, as alleged in said bill of complaint.

The defendant files herewith as part hereof copies of the orders of said Muhlenburgh county court, duly certified and marked B X. Further answering, this defendant denies that said complainants or any of them are entitled to the relief or any relief as in the
180 bill of complaint demanded; and this defendant prays the same advantage of this answer as if he had demurred or plead to the said bill of complaint, and he prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

CHARLES W. TROUSDALE, *Defendant.*
RODMAN & BROWN,
WM. LINDSAY, & M. C. HAY, *Counsel.*

Exhibit "A X" above referred to is as follows:

EXHIBIT "A X" WITH ANSWER.

STATE OF KENTUCKY:

Muhlenburgh County Court. November Term, 1868.

Court met, pursuant to adjournment, December 1st, 1868.

Present: S. P. Love, P. J., & Esq's Joseph Adcock, D. B. Roll, J. H. Martin, T. R. Clarke, J. P. Hendricks, E. G. Neel, J. J. Wood, W. R. Casey, H. G. Newman, John M. Williams, S. M. Eaton, & S. J. Hunt.

Ordered that S. P. Love be, and he is hereby, appointed a — to have the bonds of Muhlenburgh county printed for $400,000 in the capital stock of the Elizabethtown & Paducah Railroad Co., in accordance with the order calling election to vote said amount, if such bonds be necessary.

181 November Term, 1869.

WEDNESDAY, *December 1st.*

Court met pursuant to adjournment.

Present: S. P. Love, P. J., & Esq's J. H. Martin, T. R. Clark, Joseph Adcock, A. J. Lyon, S. J. Hunt, D. B. Roll, John M. Williams, J. P. Hendricks, & S. M. Eaton.

The court proceeded to pass upon the following claims and make the following levies and appropriations, viz:

Am't levied for Thos. Bruce, cl'k Co. c't, for seals on E. & P. R. R. bonds, $1,150.00.

STATE OF KENTUCKY,
Muhlenburgh County, } *sct:*

I, W. T. Stiles, clerk of the court in and for the county and State aforesaid, do certify that the foregoing is a true copy of the orders made by said court as appears of record in my office.

Witness my hand and seal of office this 6th day of November, 1885.

[SEAL.]

W. T. STILES, *Cl'k,*
By W. R. EAVES, *D. C.*

A copy of account allowed Thomas Bruce, allowed at the November term, 1869, in words and figures as follows:

Muhlenburgh county court to Thos. Bruce.

To signing and sealing 2,300 E. R. & P. R. R. at 50 each, amount due, $1,150.00.

Att.:

W. T. STILES,
Clerk Muhlenburgh Co. C't.

182 Exhibit "B X" above referred to is as follows:

STATE OF KENTUCKY:

Muhlenburgh County Court. Call Term, 1881.

WEDNESDAY, 16*th Day of February,* 1881.

It appearing to this court by an attested copy of the record of the proceedings of the funding board of Muhlenburgh county that said funding board, by a resolution adopted and passed in and by said board on the 8th day of February, 1881, request and authorize this court to levy a tax upon the taxable property in Muhlenburgh county of 75 cents on each and every one hundred dollars' worth of taxable property in said county to pay the interest on the new bonds issued according to the provisions of an act entitled "An act to authorize and empower the county of Muhlenburgh to compromise and fund its outstanding bonded indebtedness, issue bonds, and levy and collect taxes to pay same"—

It is now ordered by this court that a tax of seventy-five cents on each and every one hundred dollars' worth of all real and personal estate in the county of Muhlenburgh, including all amounts given in under the equalization laws, subject to taxation under the
183 general revenue laws of the Commonwealth, be, and the same is hereby, levied and imposed by this court for the year 1881.

This levy is upon the real and personal estate, including amounts under the equalization law, listed or to be listed for taxation in said

county under the general revenue laws of this Commonwealth in and for the year 1881. This tax is levied and imposed under and by the authority of an act of the General Assembly of the Commonwealth of Kentucky entitled "An act to authorize and empower the county of Muhlenburgh to compromise and fund its outstanding bonded indebtedness, issue bonds, and levy and collect taxes to pay the same," approved March 18th, 1878, and is levied and imposed to pay the accruing interest on the bonds issued and to be issued under authority of said act and to provide a sinking fund for their redemption and to defray the necessary expense of collecting said tax and disbursing the money under said act.

STATE OF KENTUCKY:

Muhlenburgh County Court. June Term, 1881.

It is ordered that the order of this court made and entered on the 16th day of Feb'y, 1881, be so modified that the sheriff
184 is directed to collect, and that there is levied, 10 cents on the one hundred dollars instead of 75 cents on the one hundred dollars, and the sheriff is directed to proceed to collect said sum.

STATE OF KENTUCKY:

Muhlenburgh County Court. May Term, 25th Day of May, 1885.

Whereas the funding board of Muhlenburgh county, at its regular meeting on the 19th day of May, 1885, adopted and passed the following resolution, to wit: Resolved by the funding board of Muhlenburgh in regular session, in the office of the county judge of said county, That to pay the accrued and accruing interest on the bonds issued and to be issued under authority of an act entitled, An act to authorize and empower the county of Muhlenburgh to compromise and fund its outstanding bonded indebtedness, issue bonds, and levy and collect taxes to pay the same, approved March 18, 1878, and to provide a sinking fund for the redemption or purchase of said bonds issued under said act, the county court of said county is hereby authorized *authorized* and directed to levy a tax upon all the real
185 and personal estate in said county, including all amounts given under the equalization law, subject to taxation under the general laws of this Commonwealth. Said tax for the present year shall be one dollar on each one hundred dollars of said estate, including all amounts given under the equalization law, whether shown by the assessment-rolls for 1885 or otherwise.

Now, in pursuance of said resolution and in exercise of the power *of the power* and authority vested in this court by the above-entitled act of the General Assembly of the Commonwealth of Kentucky, it is hereby ordered by this court that to pay the accrued and accruing interest on the bonds issued and to be issued under authority of said act, and to provide a sinking fund for their redemption, an annual tax of one dollar on each one hundred dollars of the property or estate taxable is hereby levied and imposed by this court upon all

the real estate and personal estate in the said county of Muhlenburgh, including all amounts given in under the equalization law, subject to taxation under the general laws of this Commonwealth, whether such estate be shown on the assessment-rolls for 1885 or otherwise.

186 STATE OF KENTUCKY, } *sct:*
County of Muhlenburgh, }

I, W. T. Stiles, clerk of the Muhlenburgh county court, do certify that the foregoing are true copies, as appears by the records in my office.

Given under my hand and official seal this 27th day of November, 1885.

W. T. STILES, *Clerk.*

The replication to the answer of Charles W. Trousdale is as follows:

Replication to Answer of Chas. W. Trousdale.

United States Circuit Court for the 6th Circuit and Kentucky District.

R. H. BROWN *et al.*, Plaintiffs or Complainants,
vs.
ALEXANDER TINSLEY *et al.*, Def'ts. } In Equity.

The replication of R. H. Brown and others, plaintiffs (compl'ts) in the above-entitled cause, to the answer of Charles W. Trousdale, a defendant herein on his own application or motion.

These repliants, saving and reserving to themselves all exceptions for want of jurisdiction of this hon. court in the premises and not waiving the same, and likewise saving and reserving to themselves all manner of advantage of all and every exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the said answer of the said defendant, Charles
187 W. Trousdale, for replication thereunto, saith that they do*th* and will aver, maintain, and prove their said bill or petition to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by these repliants; without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all of which matters and things these repliants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said bill or petition they have already prayed.

T. W. BROWN &
A. J. KELLAR,
Sol's for Repliants.

The answer of James Alexander above referred to is as follows, to wit:

Answer of James Alexander.

United States Circuit Court for the 6th Circuit and Kentucky District.

R. H. BROWN, W. A. DUKES, J. F. MORRIS, and Others, Plaintiffs,
188 *vs.*
ALEXANDER TINSLEY, Sheriff; J. H. MORTON, County Judge of Muhlenburgh County; Martin Kittinger, and Others, Members of the Funding Board of Muhlenburgh County; James Alexander, and Charles W. Trousdale, Defendants.

The answer of James Alexander, one of the defendants, to the bill of complaint of R. H. Brown and others, complainants.

This defendant, now and at all times hereafter saving and reserving unto himself all benefits and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' said bill of complaint contained, for answer thereto or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto—

This defendant, answering, says that he admits, on information and belief, the incorporation of the Elizabethtown & Paducah Railroad Company, approved February 24th, 1868; the election held on the 30th day of May, 1868; the various orders from the Muhlenburgh county court in relation to said election, and the subscription
189 to the capital stock of the Elizabethtown & Paducah Railroad Company. This defendant admits that he is the holder of the old bonds of Muhlenburgh county, and the bonds held by him are dated the 1st day of March, 1869, and signed by S. P. Love, county judge, and Thos. Bruce, county clerk, with the seal of said county attached, and are of numbers and denominations as follows, viz.

One bond for ($500) five hundred dollars, face value, No. 168, with coupons attached since 1874, @ 7 per cent. per annum interest, payable semi-annually; nine bonds of one hundred dollars each, face value, with coupons attached since 1874, payable semi-annually at the rate of 7 per cent. per annum, being bonds Nos. 623, 930, 931, 939, 705, 946, 949, 1074, and 1253.

This defendant says that he purchased said bonds in open market in the city of Louisville, Kentucky, on or about the — day of ——, 1871, and that he has held said bonds ever since he purchased the same, and was the owner thereof at the commencement of this action; that he purchased the same without any notice or knowledge of the alleged defects, if any there were, set up in the complainants' bill of complaint.

Further answering, this defendant avers, on information and belief, that the Elizabethtown & Paducah Railroad Company (which

will hereafter be called the railroad company) did, on the
190 — day of ——, 1868, apply to the Muhlenburgh county court requesting said county court to submit to the qualified voters of said county the question as to whether or not said county should subscribe for $400,000 of the capital stock of said railroad company to be paid for in bonds of said county; that said county court did order an election to be held at the several voting places in said county on the 30th day of May, 1868, and appointed judges and other officers necessary to hold said election; that the sheriff of said county gave notice to the officers appointed to hold said election in the same manner as was then provided by law in reference to other elections; that elections were held in each of said voting places in said county on said 30th day of May, 1868, and that the respective persons who acted as sheriffs at the several precincts returned to the clerk of the county court within three days after such election the poll book of their respective precincts, and the judge and county clerk of said county counted the vote, and the vote was, as appears upon the copies of the poll books, filed with complainants' bill, the whole number of votes cast being 1,320, which was more votes than at that time were usually cast at general election.

For instance, at the general election in August, 1867, there
191 *was* cast in the election of representative to the Legislature 1,224 votes; that in the general election in 1869 for representative in the Legislature there were cast 1,228 votes, and that on the question of school tax of fifteen cents on the one hundred dollars of taxable property there were cast 1,249 votes.

This defendant says that the result of said election upon said subscription was declared by the said officers; that the question as to whether said county of Muhlenburgh should subscribe the $400,000 to the capital stock of the railroad company had been carried by the vote shown in the complainants' bill, and the result of the election was entered upon the records of said Muhlenburgh county court, and the subscription was thereupon by said court ordered to be made by the clerk on behalf of said county, and copies of which orders are filed, with the answer of the defendant C. W. Trousdale, herein, which orders are referred to and made part hereof as if fully copied and stated herein. This defendant further says that after the date of said orders the S. P. Love mentioned herein, who was then the presiding judge of said Muhlenburgh county court, caused the bonds to be printed, dated the 1st of March, 1869, payable to bearer twenty years after date, with coupons attached, among which were the bonds now held by the defendant;
192 that the said Muhlenburgh county court caused said $400,000 in bonds, after they had been signed by S. P. Love, county judge, and Thomas Bruce, county clerk, and the seal of the county attached thereto, to be delivered to the said railroad company, and said county received in exchange therefor certificate No. 3 for four thousand shares of one thousand dollars each in the capital stock of said Elizabethtown & Paducah Railroad Company, which certificate was dated 26th of November, 1869, signed Samuel B. Thomas, president, and A. A. Gordon, secretary, and which certificate is copied in

full in the answer of defendant C. W. Trousdale herein, and this defendant refers to and makes the said copy a part of this answer the same as if fully copied and stated herein.

This defendant further says that said certificate of stock was delivered to and remained in the possession of the treasurer of the board of sinking fund commissioners of said Muhlenburgh county, who had been appointed by the said Muhlenburgh county court previous thereto, under the provisions of the 10th section of the act to incorporate said railroad company, February 24th, 1868, and the said certificate of stock still remains in the possession of one of the members of said board.

193 This defendant further says that after said subscription was made said railroad company built and completed a railroad through the whole length of Muhlenburgh county and within one mile of Greenville, the county-seat, the whole length of said railroad in Muhlenburgh county being twenty-six miles.

This defendant further says that said railroad was built and completed by said railroad company its whole length—from Elizabethtown to Paducah—on the — day of ——, 1871, and said road has ever since that time been run and operated its whole length; that the said twenty-six miles of track and other property appurtenant thereto in Muhlenburgh county is assessed at valuation of $260,000, and upon that assessment the successor of said railroad company pay taxes to said county of Muhlenburgh for county revenue purposes.

This defendant says that after the delivery of said bonds to said railroad company the said company sold the same in open market and the bonds held by this defendant came into his hands and possession as hereinafter set out.

This defendant further says that the county of Muhlenburgh, by its board of commissioners before mentioned, at all meetings of stockholders of said railroad company after the date of said subscription and delivery until the railroad passed into the hands of a receiver in April, 1875, voted and controlled said four thousand

194 shares of stock in all the meetings of stockholders of said railroad company for the election of officers and other purposes.

This defendant further says that to pay the interest on said $400,000 of bonds the county court of Muhlenburgh county levied a tax upon all the property subject to taxation under the general laws of the State of Kentucky for the years 1869, '70, '71, '72, and '73, and all the coupons on said bonds for those years were paid out of said collection of taxes so levied by the sheriff of Muhlenburgh county, and which taxes for said years were paid by all * * * owners of taxable property in said county; that in the year 1874 the county court of Muhlenburgh county refused to levy taxes to pay the coupons on said bonds, and no tax was levied for that year; that in the year 1876 all of the justices of the peace for said county of Muhlenburgh resigned their offices to prevent being compelled to make a levy to pay the interest on said bonds, and since said year of 1876 there has been no justices of the peace in commission in said county, and there are now no justices of the peace in com-

mission in said county. Further answering, the defendant denies on information and belief that there was any fraud in the said election of May 30th, 1868, or any irregularity or defect in the issue of said bonds, as alleged in complainants' bill; but this defend-
195 ant says that the said county and the plaintiffs as tax-payers thereof are estopped by reason of the premises herein set out from objecting to the same, if any there was; and this defendant, further answering, denies that the said complainants or any of them are entitled to the relief or any part thereof in their said bill of complaint demanded, and this defendant prays the same advantage of this his answer as if he had demurred to the said bill of complaint, and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

JAMES ALEXANDER, *Defendant.*
RODMAN & BROWN,
W. LINDSAY &
M. C. HAY, *Counsel.*

The replication to the answer of James Alexander is as follows:

Replication to Answer of James Alexander.

United States Circuit Court for the 6th Circuit and Kentucky District.

R. H. BROWN *et al.*, Plaintiffs (or Complainants),
vs.
ALEXANDER TINSLEY *et al.*, Def'ts. } In Equity.

The replication of R. H. Brown and others, plaintiffs (compl'ts) in the above-entitled cause, to the answer of James Alexander, a defendant herein, on his own application or motion.

These repliants, saving and reserving to themselves all ex-
196 ceptions for want of jurisdiction of this hon. court in the premises, and not waiving the same, and likewise saving and reserving to themselves all manner of advantage of all and every exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the said answer of the said defendant, James Alexander, for replication thereunto saith that they doth and will aver, maintain, and prove their said bill or petition to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by these repliants; without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things these repliants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by their said bill or petition they have already prayed.

T. W. BROWN,
A. J. KELLAR,
Solicitors for the Repliants.

197 And on another day of said term of our said court, to wit, on Teusday, January 26th, A. D. 1886, came the parties, by their attorneys, and filed an agreed statement of facts herein, which is as follows:

Agreed Statement of Facts.

United States Circuit Court for the 6th Circuit & Kentucky District.

R. H. BROWN & Others, Complainants,
against
ALEX. TINSLEY, Sheriff, and Others, Defendants. } Agreed Facts.

The following facts are agreed for the purposes of the trial of this action:

1. The levy of taxes by the Muhlenburgh county court for the purpose of paying interest on the $400,000 of bonds issued to the E. & P. Railroad Company in payment of its stock in said R. R. Co. for years 1869, 1870, 1871, 1872, & 1873 were levied by the said court, composed of the presiding judge alone; that said presiding judge did not during said years call upon the justices of the peace of said county to assist in laying said levies of taxes.

2. That the county judge did not call the justices of — peace of said county together to consider, in connection with himself, the question of levying a tax to pay the interest on said bonds until
198 the month of May, 1874, and at said time the court, except the presiding judge, voted against the proposition to levy a tax to pay the interest on said bonds; that since the refusal of said court, in May, 1874, to levy a tax as above set out, that no tax has been levied by the county court of said county, either composed of the county judge alone or of the said judge and justices, to meet or pay the interest or principal of the $400,000 of bonds originally issued to said E. & P. R. R. Company.

3. That the Elizabethtown & Paducah Railroad Company, by its president, on the 15th day of May, 1868, appeared in the Muhlenburgh county court, composed of the county judge alone, and requested said county court to submit to the qualified voters of Muhlenburgh county the proposition to subscribe for 4,000 shares of $100 each, being $400,000 of the capital stock of said E. & P. R. R. Co., and that in pursuance of said request so made the said court, composed of the presiding judge alone, ordered the election to be held on the 30th day of May, 1868, which was held on that day, as shown by the exhibits filed with the pleadings, which are to be considered as evidence in the case, and that the said court so composed appointed the officers to hold said election.

4. That S. B. Love, the county judge, who signed the
199 $100,000 of bonds issued to the E. & P. R. R. Co., declared throughout the county, the county of Muhlenburgh, in the year 1870, whilst a candidate for the office of county judge, that he had performed the service of signing the said bonds and had never made any charge against the county of Muhlenburgh for said service, and had never been paid anything for the service; that more

than five years after this service had been rendered (his term of office having expired) he presented to the court of claims of said county a claim for his services in signing said bonds, and said county court refused to allow said claim or any part of it.

The county judge stated that he never would have claimed but for the fact that $1,000.00 had been allowed Judge Delaney for defending the county against said bonds in the suit of John JaBine against Muhlenburgh county.

5. That the defendants James Alexander and Charles W. Trousdale bought the bonds of Muhlenburgh county, which they own, including those surrendered by Trousdale, as set out in his answer, in the open market; that they each paid for their said bonds a valuable consideration; that they had no personal knowledge or personal notice of any of the irregularities, defects, or frauds alleged
200 to have been made, existing, or practiced concerning the election, issual, or delivery of said bonds to the E. & P. R. R. Co. in complainants' bill, except such notice as they may by operation of law be presumed to have had from the record of the Muhlenburgh county court, which neither of them ever saw or examined or caused to be examined.

6. That the county of Muhlenburgh, by its constituted authorities, to wit, commissioners of sinking fund, appointed by county judge alone, sitting as county court, attended the meeting of stockholders of the Elizabethtown and Paducah R. R. Co. from the time the certificate of stock was issued to and received by said county up to the time said R. R. Co. was placed in the hands of a receiver, in May, 1875, and voted its said stock in the election of its officers and the transaction of its business.

7. That in the fore part of the year 1876 the justices of the peace in commission in the county of Muhlenburgh resigned their respective offices, each resigning for himself; that the purpose of their resignation was to escape the trouble and annoyance of mandamus to levy taxes in said county for the purpose of paying the interest and principal of said bonds issued by said county to the E. & P. R. R. Co., and that since that date there has never been a justice of the peace in commission in said county of Muhlenburgh.

201 8. That the funding board of Muhlenburgh county, elected and qualified under the provision of the act known as the funding act, referred to in the pleadings, during the year 1879 or 1880 refunded $5,000 of the old indebtedness by the issue of $1,500 of new bonds, as provided in said funding act, & that the county court, composed of the judge alone, made a levy of 10c. on each $100 of taxed property in said county to pay the interest & create a sinking fund to pay the principal of said $1,500 of bonds so issued, which tax was collected by the sheriff of said county, and the interest on said bonds was paid, and these were the only old bonds refunded by said board until the year 1885.

9. That the county judge, acting alone as the county court, without the presence — justices of the peace, ordered the election for subscription; that the clerk made the subscription and the county judge delivered the bonds of said Co. to the said R. company with-

out an order made by the said justices, unless the orders exhibited with the pleadings be held to direct such delivery on the part of the justices of the peace; that county judge, acting alone as a county court, levied every tax to pay the interest on said bonds so issued and delivered, and that the public records show this to be so;
202 that said bonds were so delivered before the completion of said railroad through said county, and that the records so show.

10. It is admitted by defendants that the plaintiffs (complainants) were tax-payers in 1868 in county of Muhlenburgh, as charged in petition or bill, and that they are such now and — at the filing of the said petition or bill.

11. It is agreed that all the acts of the Legislature of Kentucky referred to in the pleadings be considered in evidence.

12. It is agreed that the county of Muhlenburg is correctly described in the petition or bill as to its dimensions, the condition of its population, and the difficulty of access to them in May, 1868, and that the said petition or bill correctly sets forth the qualified voters of the county at that time.

13. It is agreed that after the delivery of the bonds the railroad went into the hands of a receiver, in about the year 1875; that the county never received any dividend on the stock subscribed, and the same was thereafter wiped out, the road and all the franchises of the company being sold out for debt about 1876.

14. As to all matters not agreed deemed by either party material either party may take proof.

T. W. BROWN,
Sol. for Plaintiffs.
M. C. HAY,
Att'y for Jas. Alexander & Chas. W. Truesdale.
RODMAN & BROWN,
For Defendants.

203 And at a term of our said court held for its February term, A. D. 1887, to wit, on Thursday, February 24th, A. D. 1887.

Decree Dismissing Bill, &c.

This cause having been heard upon the agreed statement of facts, pleadings, and proof in the cause and the arguments of counsel and the court being advised, it is therefore adjudged and decreed by the court that the complainants' bill be, and the same is hereby, dismissed, and that the defendants James Alexander & Charles W. Truesdale recover of complainants herein their costs in this court and in the Muhlenburgh circuit court sustained, and may have execution.

Motion of Compl'ts to Reinstate Injunc. & Motion Overruled.

The complainants, by T. W. Brown, counsel, moved the court to reinstate the injunction obtained at the commencement of this action,

which has heretofore been dissolved. Said motion was overruled; to which complainants excepted at the time and still excepts.

Appeal to Supreme Court Prayed.

And thereupon the complainants, by T. W. Brown, their counsel, prayed an appeal to the Supreme Court of the United States, which is granted upon the complainants giving bond for costs in the sum of $1,000.00 within sixty days.

And on another day of said term of our said court, to wit,
204 on Tuesday, April 19th, 1887, came the complainants and tendered their appeal bond herein, with J. N. Gish, J. J. Humphrey, Lewis Jones, W. S. Humphrey, Rufus Martin, & Geo. W. Martin as sureties, which bond is approved by the court and ordered to be filed.

The appeal bond above referred to is as follows:

Appeal Bond.

Circuit Court of the United States, District of Kentucky.

R. H. BROWN *et al.*
vs.
ALEX. TINSLEY *et al.*

Know all men by these presents that we, R. H. Brown & others, principals, and J. N. Gish, J. J. Humphrey, Louis Jones, W. S. Humphrey, Rufus Martin, Geo. W. Martin, Jr., sureties, are held and firmly bound unto Charles W. Trousdale & James Alexander in the sum of one thousand dollars, to be paid to the said Chas. W. Trousdale & James Alexander, their executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 11th day of April, A. D. 1887.

Whereas the above-named R. H. Brown and others hath
205 prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the circuit court of the United States for the district of Kentucky, at Louisville:

Now, therefore, the condition of this obligation is such that if the above-named R. H. Brown and others shall prosecute their said appeal to effect and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

J. N. GISH. [L. S.]
J. J. HUMPHREY. [L. S.]
LOUIS JONES. [L. S.]
W. S. HUMPHREY. [L. S.]
RUFUS MARTIN.
G. W. MARTIN, JR.

Sealed and delivered in presence of—
GEO. W. TOWNES,
Clerk Muhlenburgh Circuit Court.

The deposition of Daniel J. Gish, on behalf of complainants, is as follows:

Deposition of Dan'l J. Gish.

Question No. 1 by attorney for complainants. State your name, age, residence, and occupation.

Ans. My name is Daniel Joseph Gish; my occupation is that of a farmer and merchant; I live in Muhlenburgh county, Kentucky; I am 59 years of age.

206 Ques. No. 2. I call your attention to order book number 8 of the Muhlenburgh county court, containing the record of the said county court for divers years and terms, and, among other entries therein appearing, I call your attention to page 398 of said order book, on which there appears the following entry, to wit: "At a county court began and held for Muhlenburgh county, at the court-house, in Greenville, Kentucky, on Monday, the 30th day of August, 1869. Present: S. P. Love, P. J., & T. R. Clark, J. P. Hendricks, D. B. Roll, J. J. Wood, W. R. Cary, J. M. Williams, and Joseph Adcock, J. H. Morton, Esqr.;" all the language after "P. J." appearing on the face of the record to be interlined. I also call your attention to another entry, appearing to be made on the same day with the foregoing entry, on page 403, to wit: "It appearing that Muhlenburgh county being a representative district and entitled to send three pupils to the Aggricultural College of Ky., located at Lexington, it is ordered (a majority of the justices of the peace of said representative district concurring therein) that Ira D. Bodine, David W. Gish, and Joseph W. Baker be, and they are hereby, selected as pupils and have the right of receiving, free of charge for tuition, the benefit of any instructions given in said college
207 or classes, except those of law & medicine." Please state whether you know anything about the facts embraced in and shown by these entries. If you do, please give a history of all the circumstances.

Answer. The said David W. Gish mentioned above is my son. In the forenoon of the day the above order was made I applied to S. P. Love, county judge, to send my son to Lexington to school, he then holding the court. At that time there were no magistrates in the court-house, and he told me to come in the afternoon to see about it. In the afternoon of the same day, when court opened, I went in the court-house. It was then about 2 o'clock. There was still no magistrates present. Judge Love then ordered the sheriff to call the magistrates. There were 2 or 3 came in. Judge Love then read over the order appointing my son, Bodine, and Baker as pupils to them and they sanctioned it, after which they, the magistrates, all went outdoors. When they came in they did not even take their seats. They all went out of the court-house before I did. After this transaction I saw no magistrates in the court-house that day.

Cross-examined by M. C. HAY, attorney for the respondents herein:

208 Ques. No. 1. Do you know anything about who was present when the other order- which appear on the page mentioned before were made?

Answer. I do not.

Further the deponent sayeth not.

DANIEL JOSEPH GISH.

Deposition of W. T. Stiles is as follows:

Deposition of W. T. Stiles.

By T. W. BROWN, for complainants:

Ques. 1st. State your name, age, residence, and occupation.

Answer. W. T. Stiles; 34 years of age; Greenville, Muhlenburgh county, Kentucky, and am clerk of the Muhlenburgh county court. I have been clerk since September 4th, 1882.

Ques. No. 2. Who was the county clerk immediately preceeding you? And state whether he is now living.

Answer. Jno. E. Reno, and he is now alive.

Ques. No. 3. State how long Jno. E. Reno was county clerk.

Ans. The records show that he was clerk 8 years preceding my incumbency.

Ques. No. 4. Who was the incumbent of the office preceding Jno. E. Reno?

Answer. The records show that it was Thomas Bruce, and that he was clerk 8 years.

Ques. No. 5. State whether or not the records you now have in your said office and under your custody are the same records, unaltered and unchanged, as you received them from your predecessor, Jno. E. Reno.

209 Answer. They have not been changed since I have been in this office. They are now like they were when I came into office and as I received them from my predecessor.

Ques. No. 6. Look at minute book purporting in its commencement to set forth in a brief minute of the proceedings of the county court held Friday, August 27, 1869. Please compare the entries upon the minute book with the entry upon order book No. 8, on page 398--the entry upon page 398 to which I call your attention purporting to open a county court on the 30th day of August, 1869—and say whether or not the minutes on the minute book represent the same transactions that are represented to have occurred in the order book in the history or entries therein of the meeting of the county court mentioned as having occurred August 30th, 1869. If you say the entries on the minute book are not the same transactions as set forth in the order book at the meeting mentioned in the last-named record as of August 30th, 1869, state whether or not there is in any order book in this office any other representation or entry in the order book or books of this office corresponding with or rep-

resenting the facts already referred to; also explain in your
210 answer the relations between the minute and order books of this office.

Answer. You are mistaken in the date of the meeting of August 27, 1869; it shows nothing was done except appointing a guardian on that date. Below and immediately following that entry I find on the minute book this entry, to wit: "At a county court began and held for M. C., Monday, the 30th day of August, 1869;" it does not say who whas present. I further state that the other entries made on the minute book of date Aug. 30th, 1869, are, to the best of my knowledge, the handwriting of Thos. Bruce, the clerk at that time, Aug. 30, 1869, and are a brief history and correctly represent the orders made and written out in the order book of the same date, August 30th, 1869. The entries in the order book are intended to represent more at large and in full the history of what is written out in the minute book, and this is the relation of the minute book to the order book. The minute book is the book — which the clerk makes a brief entry of matters as they transpire during the session of court.

Question No. 7. Having the minute book and the order book before you, please examine them and see whether there was
211 any matter of business transacted at that time at which there were present any justices of the peace of said county, acting with the county judge; if so, state what it was, and, if there was anything that required the action of the justices of the peace of the county, state what that was and the entry showing the presence of the justices of the peace and who they were, and give the two entries relating thereto as appears upon the minute book, quoting them, and showing how much business had been done before the magistrates had been called in according to the entry on the minutes at that term of the court.

Objected to by the attorney for the respondents herein.

WM. A. WICKLIFFE, *Examiner*.

Answer. In looking over the minute book and acting upon my knowledge of the duties of justices of the peace, I see that there are two entries upon the said book of date August 30, 1869, requiring the presence of the justices of the peace with the county judge, the first of which reads as follows, to wit: "It is ordered that Ira Bodine be permitted to go to the Kentucky University. A majority of
212 the justices concurring therein." The second minute referred to above is as follows, to wit: "Joseph W. Baker and David W. Gish to go to school by consent of the justices concurring." This last minute is subsequently written out more at length on the minute book in the following words, to wit: "It appearing that Muhlenburgh county *being* a representative district and entitled to send three pupils to the Agricultural College of Ky., located at Lexington, it is ordered, a majority of the justices of the peace of said representative district concurring therein, that Ira B. Bodine, David W. Gish, and Joseph W. Baker be, and they are hereby, selected as pupils and have the right of securing free of charge for tuition the

benefit of any instruction given in said college or classes — said college except those of law and medicine." I find that this last minute is a consolidation of the two preceeding minutes, and that this is all the business that I know of, so far as the minute or order book shows, requiring the presence of the justice of the peace. The minute book shows that the magistrates, to wit, Joseph Adcock, T. B. Clark, J. P. Hendricks, D. B. Roll, J. J. Wood, W. R. Cary, John M. Williams, and Jno. H. Morton, were called in just as they were
213 taking up the business of appointing Baker, Bodine, and Gish to the college at Lexington as cadets, and it further shows that they were called in for that purpose alone. The minute book shows that a great deal of business was done before this business was transacted and after it was transacted, but the order book of same date shows that these magistrates were called in at the opening of the court, and it is done by an interlineation in the order noticing the opening of the court. This interlineation commences after the letters "P. J." From my knowledge as an expert I would state that this interlineation was made after the entire order noticing the opening of the court was made. A fac-simile copy of the proceedings of August 30, 1869, as shown by the order book, and also of the minute book of Aug. 27, 1869, including all the minutes of Aug. 30, 1869, as shown by the minute book, are filed herein and made part of this my deposition, marked "Stiles."

Cross-examined by M. C. HAY, solicitor for respondents:

Q. 1. State how you know that said justices of the peace were called in on said day, August 30th, 1869, for the purpose *of*
214 alone of appointing said Ira Bodine, Baker, & Gish to the college at Lexington. Were you present? Does said minute book show that said justices of peace were present? And, if so, give the language of the minute made next preceding the minute showing the presence of the said justices; also give the language of the minute next following the one showing the presence of said justices of the peace.

Answer. The minute book does not show any other business on that day except the business of appointing Bodine, Baker, & Gish to the Kentucky college at Lexington, which required the presence of the justices of the peace, according to my knowledge and belief. I was not present at the time. The minute book shows that the justices of the peace were present at that term of the court, but how long they were present it does not show. The language of the minute next preceding the one noting the presence of the magistrates reads as follows, to wit: "John Campfield released from 1 county levy;" and the language immediately following the one showing the presence of the magistrates reads as follows, to wit: "On motion of B. E. Pittman, county att'y, it is ordered that F. M. Allison be, & is, appt. a com'r to settle with J. H. Reno, late treasurer of this county, & to report to this court at its next term."

215 Question No. 2. What order next following the one last mentioned? Also give the language of two minutes next preceding the minute which say- "was a consolidation of the two

preceding minutes" in regard to sending said Bodine, Gish, and Baker to Lexington to school as cadets.

Answer. The order or minute you ask of next following the last-mentioned one is one sending Ira Bodine to the college at Lexington. The minutes next preceding the one consolidating the two orders sending Bodine, Baker, and Gish to the college at Lexington reads as follows, to wit: "Thos. Bruce, clerk of this court, made the subscription of four thousand shares ($400,000.00) to the capital stock of the Elizabethtown & Paducah railroad for and — behalf of Muhlenburgh county in obedience to a former order of this court made June 3rd, 1868."

2nd. "Thos. Bruce, clerk of this court, reported that he did, on the 29th day of June, 1868, in conformity with and in obedience to an order of this court made on the 3rd day of June, 1868, subscribe for and in behalf of Muhlenburgh county four thousand shares (4 *four* hundred *hundred* thousand dollars) to the capital stock of the Elizabethtown and Paducah Railroad Company."

216. 3rd. State whether or not the language of the minutes just stated by you appears after the minute showing the presence of the justice- of the peace and before the minute consolidating the two preceding ones in regard to sending said Bodine, Gish, & Baker as cadets to the Lexington school. State whether or not there is any minute made by the clerk on said minute book showing when the said justices of the peace retired from the court on that day (August 30, 1869).

Answer. They appear after the minute showing the presence of the justices of the peace and before the minute consolidate — two preceding orders appointing Gish, Bodine, & Baker as cadets to Lexington school. There is no minute showing when the justices retired from the court.

4. Examine order No. 8, page 398, before mentioned, and state whoes handwriting — the heading and the — writing showing the presence of the justices of the peace in the proceedings of the county court held August 30th, 1869. State whether or not the original order showing the presence of the county judge and the interlineation showing the presence of the justices of the peace are in the same handwriting, and whether or not, judging from the appearance of the book, the ink and the handwriting—whether they were both made by the same person and at or near same day.

217 Answer. I have examined said book and handwriting. I don't know whose handwriting it is. I don't think it is the handwriting of Thos. Bruce, who was then clerk. I can't say whether the interlineation and the balance of the order are in the same handwriting or not, though they are similar. The ink in the order and in the interlineation is similar, but I can't tell whether it was made by the same person and on the same day or not.

Ques. 5. Examine said order book 8, page 402, giving record of proceedings of said county court, held on 30th day of August, 1869, and tell in whose handwriting is the following order, viz:

"Thos. Bruce, clerk of this court, reported that he did, on the 29th day of June, 1869, in conformity with and in obedience to an order

of this court made on the 3rd day of June, 1868, subscribe for and on behalf of Muhlenburgh county four thousand shares (four hundred thousand dollars) to the capital stock of the Elizabethtown and Paducah Railroad Company."

Answer. I believe it is the handwriting of Thos. Bruce, the clerk at that time. It is similar to his other writings on said books.

Re examined by T. W. BROWN for complainants:

218 Question 1. I notice in the minute book, marked on margin of the entries therein, certain numbers. What do those numbers indicate, and are there any such numbers put opposite the first and second orders appointing pupils to the Lexington school?

Ans. The numbers you refer to designate the number of the page where the minute is entered at large on the order book. There are no numbers opposite the minutes you refer to, and only the consolidated minute is copied in the order book; the other two orders are not copied.

Ques. No. 2. I notice in the margin of the minute book, opposite the minute noting the presence of the magistrate, the word or letters "off." What is the meaning of this?

Ans. I do not know.

Ques. No. 3. State in whose handwriting is the entry on the minute book reciting the report of Bruce as to the subscription to the railroad, to which your attention has been called in the cross-examination.

Ans. There are two minutes, both occurring before the consolidated order; the first of which is in the handwriting of Thos. Bruce; the second, I think, in the handwriting of F. M. Allison, who is now dead.

219 Ques. No. 4. State whether or not during the time that the clerk of the county court served, within whose time the transactions you have deposed to occurred, he has in any of the records kept by him in his order books, now in your custody, made any minute or taken any notice of the retiracy of the justices of the peace when called in to act with the county judge as to any particular matter or affair when that matter or affair requiring the joint action of the county judge and justices was ended.

Ans. For answer to the last question propounded by the attorney for the complainants I will state that I have examined the records of the office when Mr. Bruce was county clerk and find nothing that notes the retirement of the magistrates at any time during his entire term of office. I mean by this that when they were called in to act with the county judge neither the minutes nor the orders of the court show when they retired, nor does the order book show what particular business they were called in to attend to. Part of the time during the term of his successor in office, Jno. E. Reno, the magistrates continued in office, and I find in the order book orders showing that

220 they appeared, but for what particular business it does not appear. The orders show also that they retired before the adjournment of the court. I am still clerk of the Muhlen-

burgh county court, and have at all times had control and custody of the record books in my office.

Ques. 5. State whether or not from the records in your office it appears at any time that the county judge of Muhlenburgh county proposed to the justices of the peace of said county to levy a tax to pay the interest or interest and principal of the bonds of Muhlenburgh county purporting to have been issued by said county in payment of an alleged subscription of stock in the Elizabethtown and Paducah railroad. If you say that the records in your custody show that any such transaction as enquired about did take place please state where the records — this as having transpired, and, the counsel for the defendants consenting, please incorporate in your answer the record concerning that transaction literally as it appears in the record book.

Answer. The records show that such a transaction as enquired about did occur in the Muhlenburgh county court at its May term,
1874, and the record recites the transaction in words as fol-
221 lows, to wit: "It appearing that the taxable property of Muhlenburgh county is $2,330,562, and that it will require an ad valorum tax upon all the real and personal property of said county of $1.40 upon each $100.00 worth of taxable property to meet the interest upon the $400,000.00 of bonds issued by the judge of the county court of said county to aid in the construction of the E. & P. R. R. for the year commencing March 1st, 1874, and ending the 1st day of March, 1875, and upon the question being put to the court as to whether they will levy said tax, a majority of the justices for said county being present, those who voted in the affirmative are S. P. Love, presiding judge. Those who voted in the negative were Esqrs. T. R. Clark, John H. Frost, John H. Morton, Jacob M. Vick, J. F. Driskill, B. E. Pittman, James J. Wood, W. A. Thompson, S. J. Hunt, Lewis Jones, J. P. Hendricks, S. M. Eaton—12.

"The justices then retired."

Ques. No. 6. Please state whether at the same term of the court there appeared any other order touching or relating to the said
bonds; and, if so, please state what it is, and, the counsel of
222 the defendants consenting thereto, please incorporate in your answer the record as it appears literally. Say whether or not the said court of the May term, 1874, was a court of claims. If you say it was not a court of claims state whether or not the order book containing the orders of said term show how or for what purpose the justices of the peace were called in at that time.

Answer. The following appears on the order book as an order of that term in words as follows, to wit: "F. B. Hancock, commissioner of the sinking fund for Muhlenburgh county, exhibited into court $3,000.00 of Muhlenburgh county railroad bonds for the purpose of having them canceled or destroyed. Thereupon John H. Morton, a justice of the peace for said county, made the following motion, which motion was seconded: That they did not recognize the bonds produced to court as the property or belonging to this county. They therefore refused to take any action in the matter.

The yeas and nays being required thereon, those who voted in

the affirmative were T. R. Clark, John H. Frost, John H. Morton, Jacob M. Vick—B. E. Pittman refusing to vote—F. J. Driskill, J. J. Wood, W. A. Thompson, S. J. Hunt, Lewis Jones, J. P. Hendricks, S. M. Eaton—11.

223 Those who voted in the negative were S. P. Love, presiding judge—1."

This order immediately preced-s the one incorporated in my answer before this.

I see nothing from the records of that term showing that it was a court of claims. It was not the regular time for a court of claims. While there is nothing shown from the records why the justices were called in, yet I find preceding the 2 orders I have just incorporated in my last and in my present answer and one other order which I have not incorporated the following, to wit:

"The following justices for the county appeared and took their seats, viz: T. R. Clark, John H. Frost, Jno. H. Morton, Jacob M. Vick, F. J. Driskill, B. E. Pittman, James J. Wood, W. A. Thompson, S. J. Hunt, Lewis Jones, J. P. Hendricks, & S. M. Eaton."

The other order in the records of that term of the court which appears to have been acted upon was a continuation of commissioners appointed at the last court of claims, with direction to the said commissioners to have all necessary public work done in their respective districts and report at the next court of claims.

The business of this order and that of the other 2 orders already incorporated in my last and present answers is shown by the order book to be all the matters brought before the justices of the

224 peace requiring their action at that term of the court. I wish to correct my answer to question No. 4 of the re-examination, and say now that I find in the records of May term, 1874, of the Muhlenburgh county court an order noting the fact that the justices of the peace had retired. This order is made after other orders are made on which the justices of the peace had just acted, and this order was made during the time that Thos. Bruce was clerk of the Muhlenburgh county court. I have made a careful re-examination of the records made during Bruce's term of office, and this is the only one I find noting the attendance of the justices in such connection with business properly appertaining to them as to show that they were called in for that particular business, and likewise making such a minute or order as to the retiracy of the justices of the peace as to indicate that they quit the court when they had acted on the business which they had by law a right to act upon.

Recross-examination by C. M. HAY, attorney for respondent-:

—. Examine the minute book kept by John E. Reno, clerk of the Muhlenburgh county court, which book now forms a part

225 of the record of your office, and tell what the said minutes show in regard to justices of the peace retiring at the November term, 1875, of the Muhlenburgh county court, held on the 29th November, 1875; also in regard to their retiring at the November term, 1874, of said Muhlenburgh county court.

Answer. I find on the minute book of November term, 1875, that J. P. Hendricks, a justice of the peace, retired at 10 o'clock on the morning of the 2nd day of that term, and find that on the 3rd day Louis Jones, another justice of the peace, retired at half past one o'clock; that G. T. Blackwell retired at 2 o'clock; that J. J. Wood retired at half past 3 o'clock. I find on the minute book of November term, 1874, a minute noting the retiracy of the justices before the close of the court on the 1st day of that term, and on the 3rd day of that term the minutes show the retiracy of the justices. All these minutes mentioned in this answer are in the handwriting of Jno. E. Reno, who was then the clerk of Muhlenburgh county court. I also find that these same minutes were recorded in the order books for those terms. The minutes or memoranda made by the county court clerk on the minute book heretofore referred to
226 during the terms of office of Thos. Bruce, clerk, and S. P. Love, judge, were never signed by any one, however. I see that when, in 1874, J. C. Thompson succeeded S. P. Love as county judge and Jno. E. Reno succeeded Thos. Bruce as clerk some change was made in this particular, as I see some of these minutes are signed on the minute book by J. C. Thompson, county judge.

The minutes referred to in answer to defendants' question of the minutes of November term, 1874, and November, 1875, are minutes made after J. C. Thompson has succeeded S. P. Love, county judge, and Jno. E. Reno, county clerk, has succeeded Thos. Bruce. I will state at the November term, 1874, the orders of that term show that the only business transacted while the justices were present was business which by law was business requiring their presence and action; but at the November term, 1875, I find that while the justices were present transacting their business the county judge was also transacting business which belonged to his exclusive jurisdiction. The orders also show that the county judge did transact business of his exclusive jurisdiction before the justices had taken their seats and also after they had gone out; and also they show that
227 the county judge did transact some business of his exclusive jurisdiction while the justices were present.

Further this deponent sayeth not.

W. T. STILES.

The deposition of John Henry Frost, taken on behalf of the complainants, is as follows:

Deposition — John Henry Frost.

Ques. 1st by attorney for complainants. State your age, residence, and occupation.

Ans. I am 48 years old; reside in Hopkins county, Kentucky; am a farmer.

Ques. 2. Were you or not a citizen and inhabitant of Muhlenburgh county at any time? If you say you were state when that was and how long you had been a citizen and inhabitant of Muhlenburgh county before you left it; likewise state whether or not you

were ever in commission as a justice of the peace for Muhlenburgh county. If you say that you were state what district of the said county you represented in the county court or in what district you were commissioned as a justice. If you have your commission make it a part of your deposition, and state when you were
228 put in commission, if you were put in commission, and state what was the first business that you were called upon to act on in the county of Muhlenburgh, if you were called to act on any business as a member of said county court. State how long this occurrence transpired, if it did transpire, after you received your commission.

Answer. I moved to Muhlenburgh county in 1872 and resided there until 1880. I was commissioned as a justice or the peace for district No. 1, known as the South Carrollton district. I have not my commission with me; but, as the counsel of the respondents say they will admit I was commissioned, I will not send my commission or file it herein. I don't remember the date, but think it was in 1874. The first business I was called to act on was in regard to railroad bonds. It was at a called term, I think, of the Muhlenburgh county court, and was the same day I was sworn in as a justice of the peace, and it was at Greenville. I was called in by the county judge to sit with the magistrates of the county. It was to take some action about the Muhlenburgh county bonds issued for the benefit of the Elizabethtown and Paducah railroad. When the magistrates were assembled the county judge, S. P. Love,
229 said to us "that heretofore he had been in the habit of making the levy himself to pay the interest on these railroad bonds; that he thought perhaps his acts in this regard had been illegal, and he now wished the magistrates to endorse what he had done in making levies, and to go on with him and make another levy and subsequent levies; that there had been some $3,000.00 worth of bonds redeemed, and wanted to know what disposition the magistrates would order to be made of these bonds so redeemed." He talked some time, possibly half an hour, but these are the main facts or parts I now remember.

Ques. 3. How many magistrates were present on that occasion? And, if you remember their names, give them or as many of them as you can, and also state what disposition you made of the matters brought before you. I mean the same matters spoken of in your preceding answer; also state what discussion, if any, was there among the magistrates in regard to these matters.

Ans. My recollection is that all the magistrates—twelve in number—were present, there being six districts in the county at that time and each district being entitled to two justices of the
230 peace. I don't remember the names of all, but I do remember some, as follows: Myself, T. R. Clark, J. J. Wood, Jacob M. Vick, J. H. Morton, S. M. Eaton, Louis Jones, Joseph P. Hendricks, and B. E. Pittman. I would know the faces of all of them, but I can't now recal- the names of any more who were present. We denied that the county was ow-ing any railroad bonds, and refused point blank to approve of what the county judge had here-

tofore done in regard to these railroad bonds and levies. We also refused to make the levy then proposed as well as all future levies. We denied ow-ing any bonds, and therefore refused to have anything to do with these $3,000 in bonds or to take any steps in regard to them. We further denied that these $3,000.00 in bonds had ever been any valid obligations of the county. The vote of the magistrates was taken upon these matters, eleven of whom voted "No" on the question of the bonds being a valid obligation of the county; the other one magistrate voted "No," with doubts; his name was B. E. Pittman. The county judge voted "Yes."

Ques. 4. You have said the county judge addressed you on these matters perhaps half an hour. Now, state whether or not he assumed in that speech or directly or indirectly asserted that
231 the magistrates of the county at any time approved of or in any way gave countenance to any matters connected with the subscription to the said railroad or to the making or issuing of the bonds of the county to the said railroad or to the taking of stock in the same; and state further whether or not on that occasion he claimed to have controlled and directed the whole of this business from the beginning up to the time of that meeting of the justices of the peace, which he was then addressing.

Ans. He did not. He said he had taken all the responsibility in regard to the making of the levies, but did not express himself as to anything that preceded the levies.

Ques. 5. How long after you were commissioned a justice of the peace for Muhlenburgh county did you continue in the office?

Ans. I was commissioned to fill the unexpired term of J. B. Hendricks, who had moved out of the district. I had been appointed to the place by the Gove-nor of Ky. I filled out this unexpired term. I don't remember the dates. I was then elected. During the next year after my first commission the magistrates were persued by mandamusses to compell them to make a levy which they had
232 refused to do on the application of the county judge at my first meeting with them. Suits were brought against the county by persons owning bonds to compel the levy. In the first suit of Jno. Jabine against the county the county filed an answer. Judgment went against the county. Execution was issued upon that judgment against the county, which, I think, was replevied by Jno. H. Morton. The result of this was the payment of this execution by J. H. Morton. He was not ordered to do this by any other magistrates. This was followed by other suits against the county seeking the collection of bonds and coupons, which was followed by mandamusses against the magistrates compelling them to make a levy, and after these were issued we then all resigned as soon as we could do so, determined not to make any levy in the bonds or coupon matters, believing them to be unjust and not due.

Cross-examined by M. C. HAY, for the respondents:

Ques. 1st. Where did you reside from the year 1866 until you moved into Muhlenburgh county, which, you say, was in October of the year 1872?

Ans. I lived in Hopkins county, Ky.

233 No. 2. State whether or not you ever paid any taxes levied by the Muhlenburgh county court (*ie*ther when composed of the county judge alone or composed of the justices of the peace) which were levied to pay the interest due on the bonds issued by Muhlenburgh county to pay its subscription to capital stock of the Elizabethtown & Paducah Railroad Company. I mean to pay the interest on the bonds in controversy in this action called the old bonds. If you did, tell in what year the levy was made for which you made the payment.

Ans. As administrator of my father's estate I paid a part of the railroad tax due on his estate. I don't remember whether I paid any railroad tax on my own property. I may have done so, but can't remember. These taxes were levied by the county court, composed of the county judge alone.

Further this deponent sayeth not.

JOHN HENRY FROST.

The deposition of Joseph P. Hendricks, taken in behalf of complainants, is as follows, to wit:

Deposition of Joseph P. Hendricks.

Question 1st by attorney for complainants. State your name, age, residence, and occupation.

Ans. My name is Joseph P. Hendricks. I reside in Bremen,

234 Muhlenburgh county, Kentucky. I am 58 years of age. I am now police judge of the town of Bremen.

Ques. 2. I submit to your inspection a certified copy from the order book of the Muhlenburgh county court purporting to give the proceedings of that county court at an adjourned session thereof, commencing December the 1st, 1868. In the constitution of that court for that day it appears from the certified transcript of the *preceedings* that the following members of that court were present, to wit: S. P. Love, P. J., & Esq'rs Joseph Adcock, D. B. Roll, J. H. Morton, T. R. Clark, J. P. Hendricks, E. G. Neel, J. J. Wood, W. R. Craig, H. G. Newman, John M. Williams, S. M. Eaton, & S. J. Hunt. It appears, further, from the said certified transcript that the court proceeded to pass upon certain claims and make certain levies and appropriations, which are set forth *sereatim*, concluding with this order, to wit: "For which amount the county judge is authorized to draw a warrant on the treasury or county reserve." This appears to be followed by an order "indenting to one Reed of an apprentice;" by another order succeeding the last named correcting the assessment of one Geo. M. D. Patton. Now, please examine the certified transcript to which your attention has been called and say

235 whether you were present at that court of December 1st, 1868, whether you were summoned there, and whether or not it was a court of claims as expressed in the statutes; whether or not you were at that time commissioned a justice of the peace for Muhlenburgh county, and whether or not all that is certified as having

been done by the court then convened, inclusive of the first order quoted in full, were transactions upon which the justices of the peace of the county of Muhlenburgh were compelled by law to act in conjunction with the county judge. Then look at the two orders succeeding the one to which your attention has been called and say whether or not they were matters upon which justices of the county had any right to act by law, and whether or not the matters embraced in these 2 orders were matters upon which the county judge habitually acted by himself and which the law reposed in him for action.

Ans. I suppose I was present; it has been a long time ago, and I can't remember exactly. I usually attended all the courts of claims. I see from the certified copy you have that I claimed for my attendance at court of claims in the month of November, 1868, for 2 days, and that I likewise claimed attendance at court for
236 August, 1868, 1 day. I can't tell that I was summoned to that court. I suppose it was a court of claims as laid down by the statutes at that time required. At that time I was commissioned a justice of the peace for Muhlenburgh county. I don't think the county judge could act upon the matters you quote without the presence of the magistrates. They had by law to act in conjunction with the county judge. The 2 orders you ask about does not require the magistrates to act upon. The law reposes action on all such in the county judge alone, and he habitually acted upon and disposed of such matters.

Ques. No. 3. State whether or not the magistrate on the occasion referred to were asked by the county judge to act with him as to the matter embraced in the said orders, and whether or not the magistrates took any notice of or gave any attention to the matters embraced in the 2 orders; also state whether or not, according to the usual and customary method of despatching business in court, the magistrates acted upon or paid any attention to business transacted in court when they were present with which they by law had no connection or which they supposed by law they had no connection.

237 Ans. They were not asked by the county judge, nor did they take any action therein. The magistrates did not take any part in the matters in which they had no connection or which they supposed by law they had no connection. We left these matters to the county judge.

No. 4. Whenever at a court where the magistrates were present the county judge was transacting business by law within his jurisdiction exclusively or — authority, what did the justices do while he was thus transacting business? If it took him any appreciable time to despatch any matters in his jurisdiction what did the magistrates do in the meanwhile?

Ans. I can't state positively, but my recollection is that the magistrates went on with their business.

Ques. No. 5. I again call your attention to the order immediately succeeding the 2 last to which your attention has been called, and which reads as follows, to wit: "Ordered that the county levy be,

and the same is, fixed at $2.00 per tithe, and that the sheriff collect the same and pay county creditors." Was this order or not one upon which the magistrates had to act and did act in conjunction with the county judge?

Ans. It was an order on which the magistrates had to act
238 with the county judge, and I suppose we acted with him, as that was our business. I don't *know* now recol-ect that we fixed any amount or made the order; but just suppose we did, as that was our business and duty.

Ques. 6. I call your attention to another order, which reads as follows, to wit: "M. C. Hay be, and he is hereby, appointed a commissioner to settle with trustees of the Greenville Seminary and report to this court." Was this a matter requiring by law the attention or action of the magistrates, and do you remember anything about the magistrates acting on it?

Ans. As to the duty I am not certain; as to their acting on this order I don't remember. At this time I have no recollection that any such matter was brought before the justices.

Ques. 7. I call your attention now to the order succeeding the last, which, excluding the language attempted to be cancelled, is as follows, viz: "Ordered that S. P. Love be, and he is hereby, appointed a — to have the bonds of Muhlenburgh county printed for $400,000 in the capital stock of the Elizabethtown & Paducah Railroad Co. in accordance with the order calling election to vote said amount if such bonds be necessary," the erasures in said order embrac-
239 ing the following words, viz: "Commissioner on behalf of this county" and "And report to this court." State whether or not at the time this order purports to have been made the justices of the peace of Muhlenburgh county considered them or before that time that they had anything whatsoever to do with the perfection of the subscription of the Elizabethtown and Paducah railroad or with the preparation or issuing of any bonds to said railroad. State whether or not at the time of the making of said order, and as well before as long afterwards, the county judge assumed and did act exclusively in all matters connected with said subscription, issuing of bonds, levying the taxes to pay the interest thereon, so far as orders or directions concerning any of the matters connected with the said pretended subscription were concerned. State whether the orders as made above was made by the magistrates or was directed to be made by them. State whether or not you or any other justice of the peace were at the time, at the purported date of said order or at any time preceding the same or subsequent thereto, willing, either directly or indirectly, to approve or countenance the subscription to the said railroad or the issuing of the bonds of the county thereto.

240 Ans. I did not consider for myself that I had anything to do with the perfection of the subscription of the Elizabethtown & Paducah railroad, or with the preparation, issuing, of any bonds. I don't know what the other magistrates thought. Some one did assume the exclusive jurisdiction to control the matters mentioned. I had nothing to do with it myself and don't know of

any magistrate that had. It was generally thought and recognized that the county judge did it all. I am entirely ignorant as to the order; never heard of it until now. I was neither then nor afterwards willing to countenance in any way the subscription to the stock or issue the bonds. My recollection is that the other magistrates were like myself in regard to the matter, and of the same mind.

Ques. 8. State whether or not, from your hostile feeling to the subscription of stock and to the issuing of bonds to the Elizabethtown and Paducah railroad, you would have been likely to notice any order directly or indirectly touching the preparation of bonds to be issued if the same had been brought to the attention of the magistrates or if they had been asked to act upon such an
241 order as that to which your attention has last been called, and state whether or not, if you or your associate magistrates had been asked to vote for such an order, you or they would have voted for or against the same.

Ans. Yes; with my sentiments then I would have noticed the order. I would have voted against it, and I think the justices of the peace would have done likewise.

Ques. 9. I call your attention to a certified copy of the proceedings in the Muhlenburgh county court, purporting to be of date August 30, 1869, in which proceedings there appears after the letters "J. P." the following, to wit: "& T. R. Clark, J. P. Hendricks, D. B. Roll, J. J. Wood, W. R. Cary, J. M. Williams, and Jos. Adcock, J. H. Morton, Esqrs." Now state whether or not you were present at that term of the court *in* — day in August, 1869, and also whether you were summoned to appear at the county court held in August 30 or 31st, 1869, for Muhlenburgh county.

Ans. I have no recollection of being present. My recollection is that I was sick at that time. I have no recollection of any summons served on me to appear then at that court.

Ques. 10. State any facts or circumstances that impresses
242 upon your memory that you were too sick at that time to appear; also state if you were under medical attendance.

Ans. When I first heard of it I began thinking of it and my impression was that I was sick. I have particular facts now to impress it upon my memory. I can't state whether or not I was under medical treatment. I am satisfied I made no such record as shown by the certified copy.

Ques. 11. To what do you refer when you say you made no such record as the certified proceedings would indicate?

Ans. The certified proceedings show that something was done with reference to the subscription of stock by the county to the Elizabethtown and Paducah railroad. I was always hostile to any such subscription, and if I had been there I would have manifested my hostility to it; and I am satisfied that nothing of the sort occurred while I was present or on the bench.

Ques. 12. I call your attention to the fact appearing in the certified proceedings of Aug. 31, 1869; those proceedings recite that Ira B. Bodine, David W. Gish, and Joseph W. Baker were appointed as cadets to the Agricultural College of Kentucky, located at Lex-

ington. State whether or not, if you were present at that
243 term of the court and acting upon the appointment of those young men, you would have remembered your participation in that affair.

Ans. I think I would. I am not sure of it. I have not the slightest recollection of it now.

Ques. 13. Is it or not at all probable that you would have forgotten your participation in the appointment of these young men, especially David W. Gish?

Ans. I think not.

Cross-examined by M. C. HAY, for respondents:

Ques. 1. When and from whom did you first hear that there was any order or proceeding in the Muhlenburgh county court held on the 30th day of August, 1869, in which the subscription of Muhlenburgh county to the capital stock of the Elizabethtown & Paducah railroad was mentioned?

Ans. I could not say who the first person was that told me; it has been several years since; the exact time I cannot remember.

Ques. 2. Where were you on the 25th day of August, 1869? Where were you on the 3rd day of September, 1869?

Ans. I can't say exactly as — my whereabouts on the 25th
244 August, 1869; but expect I was about home very puny. I have no particular recollection as to my whereabouts September 3rd, 1869.

Ques. 3. What is the state of your health now and what has it been for the last 5 years?

Ans. My health is and has been very bad for a number of years.

Ques. 4. At what hour of the day on the 1st day of December, 1868, did you appear and take your seat as a member of the Muhlenburgh county court, and at what hour did you retire from the court on that day?

Answer. I can't say.

Question. What justices of the peace were present and formed a part of the county court on said day? Give the names of such of them as you can from your own memory, remember.

Answer. I can't say who were present. There was a quorum, but I can't now remember their names.

Question 5. How long were you a justice of the peace in & for Muhlenburgh county, Kentucky, and in what justice's district did you reside during the term you were a justice of the peace?

Ans. I think I was elected and received my commission in 1860 for the Summers or No. 6 district, and was a justice of the
245 peace continuously from that time until the resignation of the justices some time — 1875 or 1876, and as the attorney for the respondents waive it I will not file my commission herein.

Question 6. Tell, if you can, who were the judges of the election at the Summers precinct in May, 1868, when the question was submitted to the voters of Muhlenburgh county as to whether or not Muhlenburgh county should subscribe for four thousand shares—

four hundred thousand dollars—to the capital stock of the Elizabethtown & Paducah Railroad Company.

Ans. I don't recollect who they were.

Question 7. Were you or not present at said election at said Summers precinct; and, if so, did you vote on the proposition; if so, how did you vote?

Ans. I was present, and I voted against the tax.

Ques. 8. Was there then residing in said district any other Joseph P. Hendricks beside yourself?

Ans. There was none that I knew of and I was well aequainted throughout the precinct.

Question 9. Were you present at the levy court or court of claims held on the 30th day of November, 1868, by the Muhlen-
246 burgh county court; and, if so, were you a member of said court?

Ans. I think I was present and was a member of the court.

Question 10. State whether or not the said levy court or court of claims made an appropriation on the said 30th day of November, 1868, to pay you and all the other officers who held said elections at the time the proposition was submitted to the voters of Muhlenburgh county, Kentucky, in regard to the subscribing said stock in the said Elizabethtown & Paducah Railroad Co., and if any such appropriation was made by said court were you present when they were made, and state whether or not you ever collected from said county or its officers any amount appropriated for your services as an officer of said election.

Ans. I can't say positively; I don't now remember that particular appropriation, but do know that I was paid all that was allowed me. I do not now recollect that that particular appropriation was made.

Question 11. If such order was made by said county court on said day appropriating money to pay the officers for holding said election, why was it that your hostility to the railroad sub-
247 scription and the railroad question did not assert itself then and cause you to remember the making the said appropriation?

Ans. We were officers of the county and thought we ought to have our pay for the time we had been out.

Question 12. Were you or not present and *and* a member of the court of claims held by the Muhlenburgh county court on the 1st day of December, 1869?

Ans. I don't think I missed any regular court of claims, and therefore think I was there.

Question 13. Is or not — a fact that on said 1st day of December, 1869, whilst you were a member of said court and while there was a majority of the justices of the peace of Muhlenburgh county present and forming said court, that Thomas Bruce, then clerk of the Muhlenburgh county court, presented an account and had the sum of eleven hundred & fifty dollars appropriated for his benefit and ordered to be paid him for signing and putting the seal on the bonds issued by Muhlenburgh county, Kentucky, to pay for its sub-

scription to the capital stock (four thousand shares), $400,000.00, of the Elizabethtown and Paducah Railroad Company?

Ans. I think I was there; that the account was presented
248 and allowed, and that I voted against it.

Question 14. Have you now any recollection at all as to two orders mentioned by complainants' counsel in question No. 2—I mean the 2 orders set forth in the certified copy of the proceedings of the Muhlenburgh county court, held on 1st day of December, 1868, & which was shown you by complainants' counsel just preceding the order fiving the county levy?

Ans. I have no recollection of it now.

Question 15. Now, how can you say that the county judge did not ask you or the justices of the peace who composed the court about these matters when you say you do not recollect anything at all about the making of said orders?

Ans. He never said anything to me about it, and never asked me about it. If they were at all he made them himself.

Question 16. State whether or not you were present when said orders were made.

Ans. I can't say, because I don't know when the orders were made. I may have been right there, but did not have my attention called to it and had no hand in making them.

Re-examined by attorney for respondents:

Ques. 1. You have been cross-examined by the counsel of
249 the defendants as to the 2 orders made immediately preceding the order fixing the county levy. Now, considering the fact that those 2 orders relate to matters with which you have said the justices of the peace have nothing to do, if the county judge had asked the justices of the peace setting with him as a court of claims in your presence to act on the matters in these orders, state whether or not it is probable you would have forgotten the circumstance—in other words, say whether or not such a course on the part of the county judge would or not have been so unusual and so out of the way of doing business that these orders would have been remembered by you.

Ans. I think, under these circumstances, I would have remembered the orders if the court had called my attention to them or asked the justices in my presence to act upon them.

Further the deponent sayeth not.

JOSEPH P. HENDRICKS.

The deposition of Joseph Adcock on behalf of complainants is as follows:

Deposition of Joseph Adcock.

By attorney for complainants:

250 Ques. 1st. State your name, age, residence, and occupation.

Answer. My name is Joseph Adcock; I am 68 years old; reside in Muhlenburgh county, Ky., and am a farmer by occupation.

Ques. No. 2. State whether you have been in commission as a justice of the peace for Muhlenburgh county, Ky. If so, how long have you been in commission as a justice of the peace for said county?

Ans. I have been commissioned as a justice of the peace for district No. 1, known as the South Carrollton district. I was in commission for 4 years. I remember I was a justice during 1868 and 1869. The counsel for the respondents herein waive a production of my commission, so I will not file it.

Ques. No. 2. State whether or not you remember any election was held under the order of any officer of the county for the purpose of taking the sense of the people of the county of Muhlenburgh at any time during the year 1868 as to a subscription of stock to what was then known and styled the Elizabethtown and Paducah Railroad Company. If you say that you do, state under the order of what officer of said county said election was held; also state
251 whether or not you voted at said election; if you say you did, state how you voted.

Ans. I remember that there was an election held on the question asked of some time about that time. I don't remember the exact year. I suppose it was the county judge who made the order. I voted at said election and voted against the question of subscribing stock to said railroad.

Ques. No. 3. Please state what have been your feelings and sentiments as to the attempted subscription of stock and the issuance of bonds to the said railroad ever since, and have they been continuously hostile to that subscription and bonds ever since or not.

Ans. I was hostile to it at the time and have been so continuously ever since.

Ques. No. 4. State whether or not you were in attendance as one of the justices of the peace of Muhlenburgh county, Ky., at what is generally called and known as a court of claims, commenced in November, 1868, continuing, as appears from the record, several days, embracing December 1st, 1868. If you say you were present, look at an order on the order book No. 8, page 336, of which the
252 following is a copy from the said order book *book*, omitting the erasures, viz:

"Ordered that S. P. Love be, and he is hereby, appointed a — to have the bonds of Muhlenburgh county printed for $400,000 in the capital stock of the Elizabethtown & Paducah Railroad Co., in accordance with the order calling election to vote said amount, if such bonds be necessary," the erased or cancelled words reading as follows, to wit: "Commissioners on behalf of this county," and "and report to this court." Say whether or not that order or the matter thereof was called to the attention of the justices of the peace, or whether or not the justices of the peace were called upon to act either directly or indirectly on the same by anybody. State whether or not the justices of the peace did make any appointment, as set forth in said order, or did in any way act upon the same.

Ans. I expect I was present in 1868, at the November term. The order was not called to the attention of the magistrates or justices, so far as I know, nor did they act on it in any way, shape, or form, so

far as I know. I am certain that I never acted upon it or had my attention *my attention* called to it.

253 Ques. No. 5. From the position you had taken, as you have already stated, in regard to the subscription of this stock and bonds to the said railroad, state whether or not it is probable that if the matter of the order to which your attention has just been called had been put before the justices of the county for action you would have forgotten the fact.

Ans. I don't think I would.

Ques. No. 6. Your attention is called to the record of orders and all the transactions, so far as the said records show, that transpired at a court commencing on Monday, the 30th day of November, 1868, and continued by various adjournments to December 1st, 1868, inclusive. State whether or not it appears upon the record that a great deal of business was done at that term by the county judge with which the magistrates or justices had nothing to do, and in the transaction of which they did not participate, and to which their attention was not called. State whether or not the same record shows that the business which properly belonged to and had to be dealt with by the magistrates was or not sufficient to occupy the attention of the justices during that term of the court, and state fur-

254 ther what was the custom or habit at those terms of the court, where the justices were in attendance, to pass upon claims against the county and fix the county levy in the administration of the business of that particular term between the justices and county judge. State whether or not on such occasions the claims against the county were not left by the county judge almost wholly to the justices of the peace for action, and whether or not while the justices of the peace were acting upon these claims and fixing the county levy the county judge would entertain and act upon matters of business that belonged to his office exclusively.

Ans. The record shows that there was a great deal of business transacted by the county judge alone at that term of the court, with which the magistrates had nothing to do. I would think the business which the justices transacted at that term of the court was sufficient to engage their whole attention during the term of the court. The county judge left the matter of claims usually to the magistrates, and while we were acting on these matters the county judge transacted the business which belonged to his office exclusively. I make a certified copy of the record referred to as

255 part *as part* of this my deposition, in order to sustain my answer as to the contents of the said record.

The same filed and marked "X" "Adcock."

Ques. No. 7. I now call your attention to the record of 1869, purporting to be the proceedings of the county begun and held on the 30th day of August 1869. Said proceedings recorded in order book No. 8, commencing on page 398, in which the presence of divers magistrates is recited by an interlineation after the words P. J., in said order book; among them your name, Jas. Adcock. State whether or not you were present at said term on said day.

Answer. I don't recollect being there at any time when that business was done or any of it was done.

Ques. No. 8. Having examined the entire minutes of that term as they appear of record, state what, if any, business was done or purporting to be done on that occasion required the attendance of the justices of the peace.

Answer. I do not know of any business that required their presence, except the one appointing the cadets to the Lexington school. I am not certain this required their attention.

Ques. No. 9. Were you acquainted at the time with any
256 of the young men purporting to have been appointed at that term of the court to the said Lexington school? If so, state what one or ones you were acquainted with.

Ans. I knew J. W. Baker and was slightly acquainted with young Gish. I did not know Bodine.

Ques. No. 10. If you had participated in the appointment of the young men at that time known to you or either of them to the agricultural college at Lexington, state whether or not it is probable you would have forgotten such a thing.

Ans. I don't know; if I did I have forgotten it. I have no recollection of it.

Ques. 11. If there had been any report made by the clerk, Bruce, as purports to have been made on that day, as to subscription of stock to the Elizabethtown and Paducah railroad, in your presence, sitting as a magistrate, is it or not probable, in view of your sentiments as to the subscription, you would have forgotten it?

Ans. No; I think not.

Ques. 12. State whether or not you have any recollection of a report being made by the clerk, Bruce, or by any one else to the county court sitting on the 30th day of August, 1869, or to any other court of which you were a member.

257 Answer. I have no recollection of the report being made by Bruce or any one else at that time or at any other time while I was a member of the court. I file herewith and make part of this my deposition a certified copy of proceedings of the term commencing August 30, 1869, which has been referred to above; said copy is marked "Y."

Cross*ed*-examined by M. C. Hay, attorney for respondents:

Question 1. State whether or not you were summoned or notified to attend the session of the Muhlenburgh court held on August 30th, 1869. Give your recollection about that. Tell where you were on the 30th day of August, 1869.

Ans. I can't remember being summoned. I don't recollect where I was on that day.

Question 2. Tell, if you know, who were the judges of the election at the South Carrollton precinct at the election held on the 30th day of May, 1868, when the question or proposition was submitted to the voters of Muhlenburgh county as to whether or not the Muhlenburgh county court should subscribe, for and on behalf of Muhlenburgh,

for four thousand shares (four hundred thousand dollars) of
258 the capital stock of the Elizabethtown and Paducah Railroad Company.

Answer. I don't recollect. Jno. Reed and myself very often held elections there.

Question 3. Is it not a fact that you and John Reed were the judges which held said election at that time?

Ans. I don't know; I don't remember.

Question 4. Were you present and sitting as member of the Muhlenburgh county court on the 30th day of November, 1868, as shown by the copy of the proceedings of said court held on said day & shown by the exhibits filed with and made part of this deposition. Give your recollection about that.

Answer. My recollection is that I was present.

Question 5. Were you present on said day when the following appropriations were made—if so, tell whether a majority of the justices of the peace in commission in Muhlenburgh county were present or not—viz:

Amount levied for	M. W. Gibbs, clerk at May election, 1868, South Carrollton, Ky.		2 00
Amount levied for	Joseph Adcock, May election, 1868, South Carrollton, Ky., *present*		1 00
"	"	John Reed, judge, South Carrollton, Ky., precinct	1 00
"	"	Wm. F. Finch, sheriff, " " "	2 76
"	"	Thos. J. Eades, clerk, Bogges's precinct	2 00
"	"	W. W. Martin, judge, " "	1 00

259

Amount levied for	W. E. Mobley, judge May election, 1868, Bogges's precinct		1 00
"	"	John E. Remo, sheriff, " " "	1 00

together with various appropriations made to pay the other officers for holding May election, 1868; and, if so, by whom were these appropriations ordered?

Ans. Yes. I rec-on I was present. I suppose the magistrates made the appropriations.

Question 6. Is it not a fact that the appropriations were made at that term of the Muhlenburgh county court by the said court when a majority of the said justices of the peace were present making appropriations to pay you and the other officers who held said election referred to in question No. 4, propounded by counsel for respondent, for their services in holding said election & did or not collect from the officers of said county pay for your services in holding said election?

—. Yes; it is a fact that a majority of the justices of the peace was present at that term and did make, among other appropriations, one allowing the officers of said election pay for their services for holding said election, and I suppose I did collect my pay.

Question 7. Were you present at a session of the Muhlenburgh county court held on the 1st day of December, 1869, when
260 an account in favor of Thos. Bruce was presented to said county court, which account was in words & figures as follows, viz:

Muhlenburgh county court to Thos. Bruce, Dr.

For signing and sealing 2,300 E. & P. R. R. bonds, @ 50c. *cents* each; amount due $1,150 00

And tell also if you were present when the following appropriation was made, viz:

Amount levied for Thomas Bruce for seals on E. & P. R. R. bonds $1,150 00

And, if you were present at said session of said court, then tell whether or not a majority of the justices of the peace were present and forming a part of said court at the time said account was presented and when said appropriation was made; and, if so, did said justices take part in making said appropriation?

Ans'r. I was present at the term when the said account was presented and said appropriation was made to Thos. Bruce, the clerk. A majority of the justices being present, Judge Love told the magistrates that if they did not make the appropriation they would be forced into it. When Judge Love made this statement there was not a magistrate in favor of allowing it. Before he made
261 this statement it had been talked of a good deal, and it was sufficiently shown that a majority of the justices were against making the appropriation. There was a good while elapsed after this before a vote was taken on making the appropriation. I remember that M. D. Hay made a speech to the court in favor of Bruce, the clerk, for which it is generally understood that Bruce, the clerk, paid him $100.00. I don't recollect how long after this speech before a vote was taken. The whole affair took up a large part of the day. When the vote was taken I think the whole number of magistrates—12 in number—a majority, about 7, I think, voted for it and 5 voted against it. I voted against it. I requested the clerk, Thos. Bruce, to put on record the names of the magistrates and how they voted on this appropriation, but I see from the record kept by him in his office that he did not do so.

Ques. 8. Now, *it is* not a fact that during all the time that you were a justice of the peace that at each of the court of claims or levy court which you attended and as one of the justices of the peace for Muhlenburgh county and was a member of the court that each and all of said courts were presided over by the county judge, and
262 did not the *the* said county judge take part in discussing the merits and correctness of each claim when presented and *repeted* or allowed. Did or not said county judge and said justices of the peace occupy the same room and have seats very near to and within hearing distance of each other while said court were in session?

Answer. He had something to say in it; county attorney and county judge both had a say in it when the magistrates were passing on the claims. The county judge and magistrates both occupied the same room and in hearing distance of each other while the court of claims was in session.

Question 9. Can you now remember a single instance while you

were sitting as a member of said court that there was any claim allowed or ordered to be paid when the county judge was not presiding over the court? If so, tell when it was & what claim was so ordered to be paid.

Ans'r. I don't recollect or remember any.

Question 10. Notwithstanding your hostility and opposition to the Muhlenburgh county court making said subscription to the capital stock of Elizabethtown & Paducah Railroad Company, is it not a fact that you had taxes for the years 1869, 1870, 1871, 1872,
263 & 1873 on your property levied by the county court of Muhlenburgh county, held by the county judge alone, for the purpose of paying the interest on *on* coupons on the bonds in controversy in this action generally known as the old bonds issued to the Elizabethtown & Paducah railroad?

Ans. Yes; it is true I paid these taxes.

Re-examined for complainants:

Ques. No. 1. You have been asked by the counsel for the respondents that if you now remember any claims that the county judge did not act on with the magistrates. Now, state whether it is or is not a fact that with the exception of the allowance to the clerk, Bruce, of which you have spoken, you can at present recall no claim upon which the county judge did act with the magistrates.

Ans. I can recall none. I might by having the names of parties called to my memory.

Ques. No. 2. You have been asked by counsel for the respondents about the payment of taxes for the interest on these bonds. Now, state if you paid those taxes voluntarily or whether you paid them to avoid a levy upon your property by the sheriff.

263½ Ans. I paid them because I was obliged to pay them, the sheriff having the receipts. The sheriff never levied, but he would have made a levy if I had not paid them. On this account I never brought any injunction.

Further this deponent sayeth not.

JOSEPH ADCOCK.

264 The exhibit above referred to, marked "*" Adcock, is as follows, to wit:

EXHIBIT "*" "ADCOCK."

At a county court began and held for Muhlenburgh county, at the court —, in Greenville, Kentucky, on Monday, the 30th day of November, 1868.

Present: S. P. Love, P. J., & Esqrs. John M. Williams, J. P. Hendricks, T. R. Clark, W. R. Cary, E. G. Neel, H. G. Newman, D. B. Roll, S. J. Hunt, Joseph Adcock, S. M. Eaton, & J. J. Wood—

Ordered, that court do now adjourn until to-morrow morning at 10 o'clock.

S. P. LOVE, *J. C. C.*

Court met pursuant to adjournment December 1st, 1868.

Present: S. P. Love, P. J., & Esqrs. Joseph Adcock, D. B. Roll, J. H. Morton, T. R. Clark, J. P. Hendricks, E. G. Neel, J. J. Wood, W. R. Cary, H. G. Newman, John M. Williams, S. M. Eaton, & S. J. Hunt.

To court proceeded to pass upon the following claims and make the following levies and appropriations, viz:

	Am't from page 330	$3,407 55
	But levied for J. P. Hendrick com'tee for Jacob Shanks & Shockley	17 36
265	Am't levied for John H. Morton for affidavits on soldiers' claims	40 00
	Am't levied for shingles to cover jail-house	50 00
	Am't levied for Sarah J. Buskill, com'toe for Bruskley pauper, to Feb'y, 1870	120 00
	" " " B. E. Pittman as fee for county attorney	300 00
	" " " S. P. Love as fee for county judge	400 00
	" " " S. P. Love as fee for commissioner	50 00
	" " " J. J. Wood, attendance at court of claims in Nov., 2 days	4 00
	" " " T. R. Clark, attendance at court of claims in Nov., 2 days	4 00
	" " " Joseph Adcock, attendance at court of claims in Nov., 2 days	4 00
	" " " John H. Morton, attendance at court of claims in Nov., 1 day	2 00
	" " " D. B. Roll, attendance at court of claims in Nov., 2 days	4 00
	" " " J. H. Hunt, attendance at court of claims in Nov., 2 days	4 00
	" " " John M. Williams, attendance at court of claims in Nov., 2 days	4 00
	" " " H. G. Newman, attendance at court of claims in Nov., 2 days	4 00
	" " " E. G. Neel, attendance at court of claims in Nov., 2 days	4 00
	" " " W. R. Cary, attendance at court of claims in Nov., 2 days	4 00
	Am't levied for S. M. Eaton, attendance at court of claims in Nov., 2 days	4 00
266	Am't levied for J. P Hendricks, attendance at court of claims in Nov., 2 days	4 00
	Am't levied for H. G. Newman, attendance at court, August term, 1 day	2 00
	" " " S. J. Hunt, attendance at court, August term, 1 day	2 00
	" " " S. M. Eaton, attendance at court, August term, 1 day	2 00
	" " " T. R. Clark, attendance at court, August term, 1 day	2 00
	" " " E. G. Neel, attendance at court, August term, 1 day	2 00
	" " " J. P. Hendricks, attendance at court, August term, 1 day	2 00
	" " " D. B. Roll, attendance at court, August term, 1 day	2 00
	" " " John M. Williams, attendance at court, August term, 1 day	2 00
	" " " J. J. Wood, attendance at court, August term, 1 day	2 00
	" " " Joseph Adcock, attendance at court, August term, 1 day	2 00
	" " " W. R. Cary, attendance at court, August term, 1 day	2 00
	" " " Joseph Adcock, attendance at court, May term, 1 —	2 00
	" " " W. R. Cary, attendance at court, May term, 1 —	2 00
	" " " T. R. Clark, attendance at court, May term, 1868 1 day	2 00
	Am't levied for S. M. Eaton, attendance at court, May term, 1868, 1 day	2 00
267	Am't levied for S. J. Hunt, attendance at court, May term, 1868, 1 day	2 00
	Am't levied for D. B. Roll, attendance at court, May term, 1868, 1 day	2 00
	" " " J. P. Hendricks, attendance at court, May term, 1868, 1 day	2 00
	" " " John M. Williams, attendance at court, May term, 1868, 1 day	2 00
	" " " E. G. Neel, attendance at court, May term, 1868, 1 day	2 00
	Am't levied for this year	$4,470 91

Am't levied	for	am't of the negro, am't from page 330						$58 48
"	"	" L. C. Chatham,	%	for 3 pauper coffins				15 00
"	"	" Wm. Godman,	"	" seeping paupers				55 75
"	"	" Jerry & Humphrey Pentleton,	%	for seeping paupers				50 00
"	"	" Andrew Wells,	%	for seeping paupers				25 00
"	"	" Richard Kincheloe,	"	"	"	"		40 00
"	"	" Jeffry Murry,	"	"	"	"		40 00
"	"	" John Whitehouse,	"	"	"	"		50 00
"	"	" T. A. Pittman,	"	"	"	"	in poor-house	103 00
"	"	" G. W. Eaves,	"	"	"	"		16 65
"	"	" Thos. Wood,	"	"	"	"		40 00
"	"	" Daniel Moore,	"	"	"	"		40 00
"	"	" H. W. McNary,	"	"	"	"		40 00
"	"	" Joseph D. Youts,	"	"	"	"		40 00
								$613 88

For which am't the county judge is authorized to draw warrant on treasury or county receiver.

268 On motion of Josiah Reed, it is ordered that the clerk of *the* this court enter into indenture of apprenticeship with said Reed, binding unto him a boy named Willy Wiley, infant orphan of —— Wiley, dec'd, aged 16 years next May, until he shall attain to the age of 21 years, to learn the art and trade of farming. It is further ordered that said indenture shall contain all the covenants required by law. Thereupon said Bruce, clerk as aforesaid, and said Josiah Reed acknowledged in open court an indenture according to this order, and was ordered to be recorded.

It appearing to the satisfaction of the court that George M. D. Patton stands improperly charged upon the assessor's books for the present year of this county with $1,000 upon 275 acres of land on Clifty creek, it is ordered that he be exonerated from paying tax thereon, which is ordered to be certified to the auditor and sheriff.

Ordered, that the county levy be and the same is fixed at $200 per tithe, and that the sheriff collect the same and pay county creditors.

It is ordered by the court that M. C. Hay be, and he is
269 hereby, appointed a commissioner to settle with the trustees of the Greenville Seminary and report to this court.

Ordered, that S. P. Love be, and he is hereby, appointed *a* to have the bonds of Muhlenburgh county printed for $400,000 in the capital stock of the Elizabethtown & Paducah Railroad Co. in accordance with the order calling election to vote said amount if such bonds be necessary.

Wm. Irvin, sheriff of Muhlenburgh county, exhibited into court his delinquent list taken from the auditor's list for the year 1868, which was sworn to by said sheriff, examined and approved by the court, and ordered to be copied and certified to the auditor.

Wm. Irvin, sheriff of Muhlenburgh county, exhibited into court his delinquent list for the year 1868, which was sworn to by said sheriff, examined and approved by the court, and ordered to be copied and certified to the auditor.

Wm. Irvin, sheriff of Muhlenburgh county, returned into court an

additional list of taxable property taken by him the present
270 year, which lists had been omitted by the assessor, which is ordered to be copied & certified to the auditor.

It is ordered by the court that Wm. Irvin, S. M. C., be permitted to draw from the treasury the sum of eighteen dollars for taking 36 lists of taxable property this year omitted to be taken by the assessor, and the same is ordered to be certified to the auditor for payment.

Ordered, that R. E. Humphrey, commissioner of tax- for this county for the present year, be permitted to draw from the treasury the sum of ninety-five dollars & 94 cents, the twenty per cent. retained at the last May term of this court, less the sum of eighteen dollars for 36 lists taken in by the sheriff, he, said Humphrey, having omitted to take the same, and the same is ordered to be certified to the auditor for payment.

It is ordered that Wm. Irvin, sheriff of Muhlenburgh county, be permitted to draw from the treasury the sum of forty dollars for attending & waiting on the circuit, county, & quarterly courts of this county, commencing the 20th day of February, 1868, and that
271 the same be certified to the auditor for payment.

It is ordered that Thos. Bruce, clerk of the Muhlenburgh county court, be permitted to draw from the treasury the sum of fifteen dollars & 65 cents for recording and certifying the names of 1,565 militia for the year 1868, and that the same be certified to the auditor for payment.

JOSEPH P. SHORT, Plaintiff,
against
JESSE MOORE & WIFE, Defendants. } Judgment.

No exceptions having been taken or filed to the report of the commissioner made herein on the first day of the present term, the same is now ordered to be confirmed and recorded.

It is further ordered that the defendants pay one-third of the costs of this action and the plaintiff pay the residue, and that Eaves and Allison be allowed twenty dollars as an attorney's fee herein, to be paid by the plaintiff and taxed as costs.

Ordered, that court do now adjourn until to-morrow morning at 10 o'clock.

S. P. LOVE, *J. C. C.*

272 Court met pursuant to adjournment December 2nd, 1868. Present: S. P. Love, presiding judge.

COM'TH, by A. McCOWN, Plaintiff,
against
PETER SMITH, &c., Defendants. } Order.

The parties came, by their attornies, and the defendants, by their attornies; suggested to the court that a change in the route as viewed and reported will be of less injury to the several propriators and tenants and of equal convenience to the public, and on their motion and by agreement of the parties filed herein it is now ordered that

Jas. S. Smith, Wesley Wyatt, & Thompson B. Smith (any two of whom, being first duly sworn, may act) be, and they are, appointed viewers to view and mark a way for a change in the route as viewed, marked, and reported, to lead from Reno & Taggart's mill, on the Greenville & Russellville road, to Ebenezer meeting-house, on the Greenville and Rochester road, beginning at the mouth of Alexander McCown's lane and thence leaving the route heretofore reported & running with or near the road heretofore cut out by Lewis McCown, so as to run above said Peter Smith farm, and intersecting the
273 present route just below the west corner of said Peter Smith's ridge field, and in running along the upper part of said Smith's farm the viewers may, if necessary to get suitable ground for a road, run just on inside of his fence. The- will view bo- the route- and report the change hereby ordered by metes and bounds and courses and distances; they will also report the conveniences and inconveniences that will result to the public and to individuals on account of such change, and also the names of the propriators and tenants over whose lands the same will pass.

On the application of J. P. Wells, this day filed, it is ordered that J. W. Hancock, W. H. Dewett, & A. M. Drake (any two of whom, being first duly sworn, may act) be, and they are, appointed viewers to view and mark a way for an alteration in the public road leading from the lower Elkton road, at Long creek, to Hexkman's mill, as the same passes over the lands of said Wells, beginning at a branch on the present road near the north end of his lane, and to run thence near a due south course through his farm, so as to intersect the present route at the north end of Edmund Drake's lane; that they
274 view both the old and new routes and report the same metes and bounds and courses and distances; that they report the conveniences and inconveniences that will result as well to the public as to individuals on account of such change and the names of the propriators and tenants over whose lands the same will pass.

SAMUEL ARNOLD, Plaintiff,
against
ISAAC BORD, Defendant. } Order.

On the motion of the defendant, Isaac Bord, who suggested to the court that a change in the route as heretofore viewed and reported herein will be of less damage to him and of equal convenience to the public, it is ordered that James D. Craig, Presley M. Boggess, & Jacob M. Vick (any two of whom, being first duly sworn, may act) be and they are appointed viewers to view and mark a way for a change in the route heretofore viewed and marked to lead from Dillingham ford, on Pond river, to the west end of Mrs. Wickliffe's lane as the same passes over the lands of said Bard, beginning at the corner of Isaac Bard's field, next to Wm. W. Martin's farm, and running thence along the road now in use to Jether's ford,
275 on Pond river; that they view both routes and report the conveniences and inconveniences that will result to the public and to individuals on account of such change and the names of the propriators and tenants over whose lands the same will pass. They

will report said change by metes and bounds & courses and distances, and said Craig as surveyor will lay down and report a full and complete diagram of both routes.

On motion of Mary L. Sullivan, it is ordered that she be, and is hereby, appointed guardian to William W. Locke, Richard A. Locke, Mary F. Locke, & Charles C. Locke (infant orphans of Richard Locke, dec'd), who, being over 14 years of age, appeared in open court and made choice of the said Mary L. Sullivan as their guardian, who thereupon took the oath prescribed by law and executed bond, with Seth Beasley as her surety, who was approved by the court.

COM'TH OF KENTUCKY, Pl'f,
vs.
WILLIAM SHERFIELD, Def't. } Motion.

276 It is ordered that the defendant, Wm. Sherfield, be required to give additional security as guardian to Finis & Angeline Lear, to which motion the defendant entered his appearance; and the motion being heard, & the court being of the opinion that the surety in the guard. bond is insufficient & insolvent, & the said Sherfield refusing to give further security, it is therefore ordered that he be removed as such guard.

On motion of Henry Lear it is ordered that he be, and is hereby, appointed guardian to Fuies Lear, infant orphan of Levi Lear, dec'd, who, being over 14 years of age, appeared in open court and made choice of the said Henry Lear as his guardian, who thereupon took the oath prescribed by law & executed bond, with Samuel C. McGee his surety, who was approved by the court.

COM'TH, by MARY J. LEAR, Pl'f,
vs.
HENRY LEAR, Defendant. } Motion.

The court having inquired into the sufficiency of the security of Henry Lear as guardian of Mary J. Lear, it is ordered that he appear in the court and show cause why he shall not give additional security, to which motion said Lear entered his appearance;
277 and, the motion being heard, it is adjudged that his surety in his said guardian bond is insufficient, and the said Henry Lear thereupon executed an additional bond, with Samuel C. McGee as his surety, who was approved by the court.

LUCINDA R. K. GOODNIGHT, Pl'f,
versus
CHARLES EAVES & Others, Def'ts. } Final Judgment.

The commissioners appointed to lay off and set apart to the plaintiff her dower in the 63 acres of land mentioned in the pleading and described in the exhibit having filed their report, and no exceptions having been filed to the same, it is now ordered that the same be confirmed, and that the said plaintiff have as dower in said land the twenty-two acres set apart to her by the commissioners and described

by metes and bounds *bounds* in their report on file in this action. It is further adjudged that the plaintiff pay one-third the costs of this suit, and that Charles Eaves, the legal owner, pay the remaining two-thirds of the cost. It is further adjudged that Hay & Thompson, attorneys for the plaintiff, be, and they are hereby, allowed the sum of thirty dollars for their services, to be taxed as costs
278 and paid by the parties to this action, as before provided. It is further adjudged that a lien be retained on the plaintiff's dower for the payment of the costs of this suit. Ordered that court do now adjourn.

S. P. LOVE, *J. C. C.*

STATE OF KENTUCKY, }
County of Muhlenburgh, } *sct:*

I, W. T. Stiles, clerk of the Muhlenburgh county court, do certify that the foregoing are true copies of the order made at the November term, 1868, as appears of record in my office.

Witness my hand this 8th day of January, 1886.

W. T. STILES, *Clerk.*

At a county court began and held for Muhlenburgh court, at the court-house, in Greenville, Ky., on Monday, the 30th day of August, 1869—present, S. P. Love, P. J., & T. R. Clark, J. R. Hendricks, D. B. Roll, J. J. Wood, W. R. Cary, J. M. Williams, and Jas. Adcock, J. H. Morton, Esqrs.—on motion of Ruben Tipton and James A. Weeks, it is ordered that they be permitted and are hereby licensed to keep a tavern at their house, in the town of Paradise, Ky., for
279 the term of one year from this date, they having paid into the court the sum of twenty-five dollars and costs hereof, and having introduced proof required by law, and who thereupon took the oath required by law and executed bond, conditioned according to law, with S. A. Jackson as their surety, who was approved by the court. It is further ordered that said license contain the privilege to sell spirituous liquors.

It appearing to the satisfaction of the court that Jacob Whetmer stands improperly charged upon the assessor's books for the present year with $308 on land, it is ordered that he be exonorated from the payment of tax upon the same, which is ordered to be copied and certified to the sheriff and auditor.

It appearing to the satisfaction of the court that Robert Sherrod stands improperly charged upon the assessor's books for the present year with $1,100 on land, it is ordered that he be exonorated from the payment of tax upon the same, which is ordered to be copied and certified to the sheriff and auditor.

It appearing to the satisfaction of the court that Isaac Mil-
280 ler stands improperly charged upon the assessor's books for the present year with $500 on land, it is ordered that he be exonorated from the payment of tax upon the same, which is ordered to be copied and certified to the sheriff and auditor.

It appearing to the satisfaction of the court that William G. Whetneer stands improperly charged upon the assessor's books for the

present year with $324 on land, it is ordered that he be exonorated from the payment of tax upon the same, which is ordered to be copied and certified to the sheriff and auditor.

It appearing to the satisfaction of the court that Josiah Reed stands improperly charged upon the assessor's books for the present year with $1,650 on land and personal property, it is ordered that he be exonorated from the payment of tax upon the same, which is ordered to be copied and certified to the sheriff and auditor.

It appearing to the satisfaction of the court that John Campfield, guardian to James Arnold, stands improperly charged upon the assessor's books for the present year with $300 on land, it is
281 ordered that he be exonorated from the payment of tax upon the same, which is ordered to be copied and certified — the sheriff and auditor.

It appearing to the satisfaction of the court that John Campfield, guardian to Moses Arnold, stands improperly charged upon the assessor's books for the present year with $2,000 under the equalization law, it is ordered that he be exonorated from the payment of tax upon the same, which is ordered to — copied and certified to the sheriff and auditor.

It appearing to the satisfaction of the court that John Campfield stands improperly charged upon the assessor's books for the present year with a county levy, it is ordered that he be exonorated from the payment of the same, which is ordered to be copied and certified to the sheriff.

It appearing to the satisfaction of the court that Thos. Taggart stands improperly charged upon the assessor's books for the present year with $700 under the equalization law, it is ordered that he be exonorated from the payment of tax upon the same, which is
282 ordered to — copied and certified to the sheriff and auditor.

It appearing to the satisfaction of the court that A. J. Browning stands improperly charged upon the assessor's books for the present year with $200 on land, it is ordered that he be exonorated from the payment of tax upon the same, which is ordered to be copied and certified to the sheriff and auditor.

It appearing *the* the satisfaction of the court that Greenberry Rose stands improperly charged upon the assessor's books for the present year with a county levy, it is ordered that he be exonorated from the payment of same, which is ordered to be copied and certified to the sheriff.

Ordered that T. R. Clark, a justice of peace for Muhlenburgh county, hold his justice's court in his district on the last Wednesday in March, June, September, and December.

On motion of William F. Ward, it is ordered that the clerk of this court enter into indenture of apprenticeship with said Ward binding unto him a boy named Edward Sweeney, Dequesney Sweeney,
283 his father, appearing in open court and consenting thereto, aged 9 years *old* the 15th day of September, 1869, to learn the art and trade of farming. It is further ordered that said indenture shall contain all the covenants required by law. Thereupon said Bruce, clerk as aforesaid, and said William F. Ward acknowl-

edged in open court an indenture according to this order, and — was ordered to be recorded.

On motion of B. E. Pittman, county attorney, it is ordered that F. M. Allison be, and is hereby, appointed a commissioner to settle with Jesse H. Reno, late treasurer of this county, and report the same to the next term of this court.

It is ordered that A. J. Lyon and William Corley be, and they are hereby, appointed commissioners on a bridge across a slough near J. J. Robertson's; that they report the repairs necessary to be done and the probable cost of the same to this court.

It is ordered by the court that Thos. M. Morgan, sheriff of this county, be, and is hereby, appointed administrator of the personal estate of John Turner, dec'd.

284 It appearing to the satisfaction of the court, by competent testimony, that James Malone (of color), who was by a former order of this court bound as an apprentice to Isaac Malone, has abandoned the service of the said Malone, and B. E. Pittman, the county attorney, being duly notified of the same, it is now ordered by the court that said Malone be released and exonorated from said articles of apprenticeship.

On motion of W. W. Martin it is ordered that he be, and is hereby, appointed administrator of the personal estate of Annie Martin, dec'd, who thereupon took the oath prescribed by law and executed bond conditioned according to law, with James Martin, F. J. Martin, and John E. Rice as his sureties, who are approved by the court.

On motion of W. W. Martin, adm'r of Annie Martin, dec'd, it is ordered that P. C. Drake, Thos. J. Reynolds, and Thos. H. Martin be, and they are hereby, appointed appraisers of the personal estate of said decedent, any two of whom, being first duly sworn, may act, and report to this court.

285 A paper purporting to be the last will and testament of John Roark, dec'd, was exhibited into court and proved to be the act and deed of said decedent by the oaths of S. E. Smith and T. A. Pittman, two of the subscribing witnesses thereto, who also proved the attestation — Aurelius Mann, the other subscribing witness, and ordered to be recorded.

The following settlements were exhibited into court, to wit:

A settlement of Elijah Dukes, guard. to Bermiah Dunn; same to Edwards' heirs; same to James M. Dunn; a settlement of J. P. Hendricks, adm'r of A. Browning, dec'd; same of H. W. Hays, adm'r to A. M. Carter, dec'd.

Which settlements were examined by the court, having laid over one term for exceptions, and, none being made or filed, *is* now ordered to be recorded.

The following settlements were exhibited into court, to wit:

A settlement of Zack Rose, adm'r of Delaney Jones.
" " " William Irvin, " " Daniel Jackson, dec'd.

Which settlements were examined by the court and ordered to lie over one term for exceptions.

286 SAMUEL ARNOLD, Plaintiff, *against* ISAAC BARD, Defendant. } For New Road.

Ordered that this cause be continued.

Summons awarded against the heirs of John Staples, dec'd, the last term of this court on probate of will of said decedant. Ordered by the court that this cause be continued.

In the matter of Ann Martin's will*s* James Martin, W. W. Martin, F. M. Imbler, Laura L. Reynolds, F. J. Martin, William W. Rice, John T. Reynolds, S. W. Earle, E. Rice, J. E. Rice, Cordie Imbler, James Rice, A. L. Earle, M. J. Martin, Laura A. Allison, J. W. Allison, Elijah W. Chapman, Amanda E. Chapman, Miles J. Howlett, S. B. Howlett, G. W. Nellis, S. J. Nellis, Aaron L. Gregsby, J. F. Martin, S. E. Rice, Mary S. Rice, John Martin, G. J. Ingram, and Mary Ingram, devisees under the will and heirs-at-law of said Ann Martin, entered their appearance and presented their written protest against the probate of said paper as her will. The execution of said paper — then, in open court, proven by the oath of Joseph Ricketts, a subscribing witness thereto, who also proved the attestation
287 of Lucy Ricketts, also a subscribing witness thereto; and, upon hearing all the evidence, it is the opinion of the court that the said instrument of writing is not the true last will and testament of said Ann Martin, dec'd. It is therefore adjudged by the court that the same be rejected, and probate thereof is refused.

Thos. Bruce, clerk of this court, reported that he did, on the 29th day of June, 1868, in conformity with and in obedience to an order of this court made on the 3rd day of June, 1868, subscribed for and on behalf of Muhlenburgh county four thousand shares (four hundred thousand dollars) to the capital stock of the Elizabethtown and Paducah Railroad Company.

The viewers appointed upon the application of James H. Danks to view and mark out a way for a *nad* road presented their report, which was ordered to be filed, and this cause is continued.

It appearing that Muhlenburgh county being — representative district and entitled to send three pupils to the Agricultural College of Ky., located at Lexington, it is ordered (a majority of the justices of the peace of said representative district concurring therein)
288 that Ira D. Bodine, David W. Gish, and Joseph Baker be, and they are hereby, selected as pupils and have the right of receiving, free of charge for tuition, the benefit of any instructions given in said college or classes except those of law & medicine.

It appearing to the satisfaction of the court that William Irvin, administrator of Jesse R. Craig, dec'd, stands improperly charged upon the assessor's books for the present year with $1,000 on land, it is ordered that he be exonorated from the payment of tax upon the same, which is ordered to be copied and certified to the sheriff and auditor.

C. L. MOREHEAD, Pl'f.
vs.
ROB'T CLARK, Def't.

The pl'f in the above action, by his attorney, moved the court for correction of cost as taxed in this action for reduction of two witness claims, which motion was overruled by the court; and it appearing to the court that the taxation was incorrect as to the fees of sheriff for summoning and attending jury on writ of *ad quad damnum* as to the one writ, it is therefore adjudged that said
289 taxation be so corrected as to allow said sheriff eight dollars in place of twelve dollars, as shown by said taxation; and execution having been issued for the amount of costs as taxed previous to this order, it is therefore ordered and decreed that said execution be credited by four dollars, the amount shown in this order of correction.

It appearing to the satisfaction of the court that E. M. Blacklock, guardian to Elwood Jagoe, stands improperly charged upon the assessor's books for the present year with $3,000 under the equalization law, it is ordered that he be exonorated from the payment of tax upon the same, which is ordered to be copied and certified to the sheriff and auditor.

Ordered, that court do now adjourn.

S. P. LOVE, *J. C. C.*

STATE OF KENTUCKY,
County of Muhlenburgh, } *sct:*

I, W. T. Stiles, clerk of the Muhlenburgh county court, do certify that the foregoing are copies of all the orders that were made at the August term, 1869, as appears of record in my office.

Witness my hand this 8th day of January, 1886.

W. T. STILES,
Clerk Muhlenburgh Co. C't.

290 Exhibit "Y" above referred to is as follows:

EXHIBIT "Y."

A call county court Friday, Aug. 27th, 1869.

On motion of McJ. Davis — is appt. guardian to Britton A., Ann Eliza, and Samuel A. Davis, infant orphans of A. N. Davis, dec'd, & ext. bond, with W. B. Davis and S. E. Smith as sureties, who are approved by the court, and said McJ. Davis thereupon took the oath prescribed by law.

At a county court began and held for M. C., Monday, the 30th day of August, 1869.

Upon hearing the testimony the court is of the opinion that the will should be rejected.

A paper purporting to be the last will and test. of John Roark, dec'd, was produced to court and prove- by the oath of Thos. A. Pittman, one of the subscribing witness- thereto, also Samuel E.

Smith, another of the subscribing witness-, who prove- the attestation of Aurilius Mann, the other subscribing witness, & ordered to be recorded.

291 John A. Weeks — Rubin Tipton granted tavern lisence at Paradise, who made pro-f & executed bond, with —.

Jacob Whitmer release- from $308 on land and personal property.

T. Clarks — court change to the last Wednesday March, June, Sept., & Dec. in each —.

Sherrod & White released from 1,100 on land.

Isaac Miller released from $500 on land.

W. G. Whitmer released from $324 on land.

Joseph Reed released from $1,500 on land & 150 on person-property.

Indenture of apprenticeship with Wm. F. Wood, binding unto him a boy named Edward Swiney, aged — years the 15th of next September, to learn the art and trade of farming, Dequesny Sweeney, his farther, consenting thereto, being in open court.

John Campbell, guard. for James Arnold, released $300.

Same, Moses Arnold, $2,000.

John Campbell released from 1 county levy.

292 Present: Joseph Adcock, T. R. Clark, J. P. Hendricks, D. B. Roll, J. J. Wood, W. R. Cary, Jno. M. Williams, Jno. H. Morton.

On motion B. E. Pittman, county att'y, it is ordered that F. M. Allison be, & is, appt. a com'r to settle with J. H. Reno, late treasurer of this county, & report to this court at its next term.

It is ordered that Ira Bodine be permitted to go to the Kentucky University, a majority of the justices concurring therein.

A. J. Lyon & Wm. Corley, com'r- to report the probable cost of a bridges.

It is ordered that Isaac Malone be released from his articles of indenture from James, a negro.

Thomas Taggart released from $700 under the eql. law.

Ordered, that the sheriff of this county be, and he is hereby, app't'd adm'r of John Turner, dec'd; money & — in Morgantown, in Four- waud.

A. J. Browning released from $200, land.

293 On motion of W. W. Martin, it is ordered that he —, and is hereby, appointed adm'r of Anna Martin, dec'd, with Jas. Martin, T. J. Martin, & J. E. Rice his sureties.

On motion of W. W. Martin, adm'r of Anna Martin, dec'd, it is ordered that P. H. Drake, T. J. Reynolds, Thos. H. Martin —, any two of whom, being first duly sworn, may act.

Greenberry Rose released from county levy, being under age.

On motion of C. L. Morehead to reduce taxation in cost in suit in this court where C. L. Morehead was pl'f & Robert Clark def't, it is the opinion of the court that the witness claims be sustained.

Joseph W. Baker & David W. Gish to go to school, by consent of the justices concurring.

In the matter of Ann Martin's will James Martin, W. W. Martin, F. M. Imbler, Laura L. Reynolds, F. J. Martin, William W. Rice,

John T. Reynolds, S. W. Earle, E. Rice, J. E. Rice, Cordie Imbler, Jane Rice, A. L. Earle, W. J. Martin, Laura A. Allison, J. W. Allison, Elijah W. Chapman, Amanda Chapman, Miles J. Howlett, S. V. Howlett, G. W. Nellis, S. J. Nellis, Aaron L. Gregsby, J. F. Martin, S. E. Rice, Mary S. Rice, John Martin, Geo. J. Ingram,
294 Mary Ingram, devesees under the last will and *and* heirs-at-law of said Ann Martin, entered their appearance and presented their written protest against the probate of said paper as her will. The execution of said paper was then, in open court, proven by the oath of Joseph Ricketts, a subscribing witness thereto, who also proved the attes-tion of Lucy Ricketts, also a subscribing witness thereto; and, upon hearing all the evidence, it is the opinion of the court that the said instrument of writing is not the true last will and testament of said Ann Martin, dec'd. It is therefore adjudged by the court that the same be rejected, and probate thereof is refused.

Thos. Bruce, clerk of this court, made the subscription of four thousand shares (four hundred thousand dollars) to the capital stock of the Elizabethtown & Paducah railroad for and on behalf of Muhlenburgh county, in obedience to a former order of this court, made June 3rd, 1868.

Thomas Bruce, clerk of this court, reported that he did, on the 29th day of June, 1868, in conformity with and in obedience
295 to an order of this court make on the 3rd day of June, 1868, subscribe for and on behalf of Muhlenburgh county four thousand shares (4, four, hundred thousand dollars) to the capital stock of the Elizabethtown and Paducah Railroad Company.

It appearing that Muhlenburgh county being a representative district and entitled to send 3 pupils to the Agricultural College of Ky., located at Lexington, it is ordered, a majority of the justices of the peace of said representative district concurring therein, that Ira D. Bodine, David W. Gish, and Joseph W. Baker be, & they hereby are, selected as pupils and have the right of securing, free of charge for tuition, the benefit of any instruction given in said college or classes — said college except those of law & medicine.

A call court, Sept. 4, 1869.

On motion of Joseph Ricketts, it is ordered that he be, & is hereby, app't'd guard. to John W. Arnold, infant orphan of Jesse Arnold, dec'd, said minor being a non-resident of this State, who took the oath required by law & executed bond, with John Slobaugh as his surety.

296 STATE OF KENTUCKY, }
County of Muhlenburgh, } *sct:*

I, W. T. Stiles, clerk of the Muhlenburgh county court, do certify that the foregoing are true transcripts of entries on the minute book in my office, which is a book in which the clerk of the court makes a brief entry of the business done as it progresses, from which he makes up his entries for the order book.

Given under my hand this 8th day of January, 1886.

W. T. STILES, *Clerk.*

On motion of Jacob Whitmer, it is ordered that he be, and is hereby, appointed adm'r of Sam'l W. Whitmer, dec'd (the widow, by the oath of J. P. Hendricks, in open court relinquished her right to act), who thereupon took the oath prescribed by law and executed bond conditioned according to law, with J. P. Hendricks as his surety, who was approved by the court.

On motion of Jacob Whitmer, adm'r of Samuel W. Whitmer, deceased, it is ordered that Samuel Whitmer, John M. Gish, & John Phillips be, and they are hereby, appointed appraisers of the personal property of said decedant, any two of whom, being first
297 duly sworn, may act; that they report the articles and value of each set apart by them to the widow separate and apart from the articles appraised for sale and report to this court.

The court proceeded to pass upon the following claims and make the following levies and appropriations, viz:

Am't levied for	M. W. Gibbs,	clerk	May election,	1868,	So. Carrollton	$2 00
"	" Joseph Adcock,	judge	"	"	"	1 00
"	" John Reed,	"	"	"	"	1 00
"	" Wm. F. Finch,	sheriff	"	"	"	2 76
"	" Thos. J. Eades,	clerk,	Boggess precinct			2 00
"	" W. W. Martin,	judge,	"	"		1 00
"	" W. E. Mobley,	"	"	"		1 00
"	" John R. Reno,	sheriff,	"	"		1 00
"	" Thos. J. Jones,	clerk,	Court-House precinct			2 00
"	" E. G. Neel,	judge,	"	"		1 00
"	" J. L. Williams,	"	"	"		1 00
"	" Wm. Irvin,	sheriff,	"	"		1 00
"	" H. H. Dennis,	clerk,	Paradise	"		2 00
"	" D. B. Roll,	judge,	"	"		1 00
"	" Jarrard Wallace,	"	"	"		1 00
"	" D. L. James,	sheriff,	"	"		3 40
"	" Samuel Turner,	clerk,	Myers	"		2 00
"	" H. G. Newman,	judge,	"	"		1 00
"	" S. J. Hunt,	"	"	"		1 00
"	" Latt. Penrod,	sheriff,	"	"		2 92
"	" John Roark,	clerk,	Summers precinct			2 00
"	" J. P. Hendricks,	judge,	"	"		1 00
"	" S. M. Eaton,	judge,	"	"		1 00
"	" Charles Morgan,	sheriff	"	"		2 76

298

Am't levied for	M. W. Gibbs,	clerk	Aug. election,	1868,	South Carrollton	$2 00
"	" T. R. Clark,	judge	"	"	"	1 00
"	" John Reed,	"	"	"	"	1 00
"	" John W. Howlett,	sheriff	"	"	"	2 76
"	" E. W. Martin,	clerk	"	Boggess		2 00
"	" S. R. McLean,	judge	"	"		1 00
"	" John M. Roark	"	"	"		1 00
"	" W. E. Mobley,	sheriff	"	"		1 00
"	" N. S. Roark,	clerk	"	Court-House		2 00
"	" E. G. Neel,	judge	"	"		1 00
"	" W. R. Cary,	"	"	"		1 00
"	" Wm. Irvin,	sheriff	"	"		1 00
"	" H. H. Dennis,	clerk	"	Paradise		2 00
"	" D. B. Roll,	judge	"	"		1 00
"	" J. J. Wood,	"	"	"		1 00
"	" Wm. Hill,	sheriff	"	"		3 40
"	" S. J. Hunt,	clerk	"	Myers		2 00
"	" Samuel Turner,	judge	"	"		1 00
"	" H. J. Newman	"	"	"		1 00
"	" Latt. Penrod,	sheriff	"	"		2 92

Am't levied for	C. M. Sparks, clerk	election, 1868,	Summers		$1 00
" "	J. P. Hendricks, judge	" "	"		1 00
" "	John Miller "	" "	"		1 00
" "	Simeon Roark, "	" "	"		2 76
" "	M. W. Gibbs, clerk	Nov. election,	South Carrollton		2 00
" "	T. R. Clark, judge	"	"		1 00
" "	John Reed "	"	"		1 00
" "	Charles Taylor, sheriff	"	"		2 76
" "	E. W. Martin, clerk	"	Boggess		2 00
" "	W. P. Jenigan, judge	"	"		1 00
" "	John M. Roark, "	"	"		1 00
" "	W. E. Mobley, sheriff	"	"		1 00

299

Am't levied for	N. S. Roark, clerk	Nov. election,	Court-House		2 00
" "	E. G. Neel, judge	"	"		1 00
" "	W. R. Cary, "	"	"		1 00
" "	Wm. Irvin, sheriff	"	"		1 00
" "	H. H. Dennis, clerk	"	Paradise		2 00
" "	J. J. Wood, judge	"	"		1 00
" "	D. B. Roll, "	"	"		1 00
" "	Wm. Hill, sheriff	"	"		3 40
" "	S. J. Hunt, clerk	"	Myers		2 00
" "	H. G. Newman, judge	"	"		1 00
" "	W. M. Blockwell, "	"	"		1 00
" "	Latt. Penrod, sheriff	"	"		2 92
" "	Jno. R. Roark, clerk	"	Summers		2 00
" "	J. P. Hendricks, judge	"	"		1 00
" "	John Miller, "	"	"		1 00
" "	Simeon Roark, sheriff	"	"		2 76
" "	H. H. Martin, last payment on poor-house				530 00
" "	Thos. Bruce, assignee for Henry Porter				73 52
" "	Henry Porter, com. school commissioner				82 10
" "	bridge across Isaac's creek, on lower Madisonville road				5 00
" "	H. G. Newman, *releived* & interest				97 60
" "	F. M. Allison, " & "				44 80
" "	Jacob Jackson, % for hauling lime to poor-house				2 00
" "	Jas. P. McIntire, assignee of T. A. Pittman				44 60
" "	John McIntire, " same				35 67
" "	T. A. Pittman, % for keeping poor-house				33 73
" "	McHay & Co., " goods for " &c.				26 22
" "	John McIntire, " stoves & for jail				22 75
" "	W. P. Hancock, " work on court-house, &c.				8 00
" "	B. J. Humphrey, " bridge across Muddy fork				58 00
" "	L. C. Chatham, " pauper coffins, &c.				28 00
" "	John Noffsinger, assignee of R. E. Humphrey, *releived*				67 20

300

Am't levied for	S. P. Love for bridge across Nelson creek, paid			25 00	
" "	same " taking lunatic to Hopkinsville			10 00	
" "	same " comparing poll books, 5 days			5 00	
				$40 00	
	Credit by cash received for land warrants			29 00	
	Due Love				11 00
" "	Lem. Well, com'tee for Julius Hill, pauper				15 00
" "	Samuel Harroldson, for work on public road				5 00
" "	D. B. Roll, ac. for 2 inquests, provided both parties are insolvent				12 00
" "	W. W. Hancock, ac. for waiting on court 2 days				2 00
" "	W. C. McNary, " confer-ing with Hopkins Co. C. as com'r				6 00
" "	G. W. Eaves, ac. for work on public road				7 50
" "	E. R. Weir, Jr., " table covers for court-house				4 80
" "	Daniel Gates, " paupers' coffins, &c				13 75

Am't levied for	W. A. Mohon, ac. for work on public road		$2 50
" "	Lemuel Boggess, " hauling plank for jail		6 00
" "	Jubel Vincent, " paupers' burrial clothes		10 73
" "	John McIntire, *relieved* & int.		7 30
" "	Jacob N. Gish, ac. for work on public road		2 50
" "	Samuel E. Smith, ac. for settling with com. school com'r as com'r		5 00
" "	John Reed, ac. as com'r on bridge across Cypress		5 00
" "	Woodburn & Reed, ac. for plank for jail		9 00
" "	Thos. Stone, " work on public road		5 00
" "	Jonathan Kittinger, " " "		5 00
" "	George W. Eaves, " building bridge across Gibson's creek		20 90
" "	Chesley Stone, ac. work on public road		5 00
" "	James H. Hughes, " "		2 50
" "	N. J. Harris, as com'r, school com'r, $40.00; fuel & stationery for office, $40.00		80 00
" "	Sarah J. Buskill, com'tee for Brinkley, pauper		10 00
" "	S. H. Dempsy, ac. for medicines & attention at poor-house		4 00
" "	J. H. Reno, *releived* & int.	$344 64	
	Credit by cash for land warrants	24 30	
	This am't due said Reno		320 34
" "	Wm. Irvin, ac. as sheriff for road orders, &c		59 60
" "	Thos. Bruce, " clerk, seals road orders, &c		362 05

301

Am't levied for	Lemuel Boggess, assignee of W. D. Shelton, jailer		40 00
" "	M. C. Drake, " same "		99 25
" "	W. D. Shelton, ac. as jailer (same as above)		23 25
" "	W. D. Lindsey, relevy & interest 2 years		3 36
" "	W. F. Mann " & " "		1 12
" "	Simeon Roark, " & " "		3 09
" "	W. E. Mobley, ass. of J. W. Johnson, relevy & interest 2 years		6 72
" "	F. B. Hancock, ass. of H. H. Morton, relevy & interest 2 years		593 60
" "	same, " S. E. Smith, " & " "		68 05
" "	Joseph Ricketts, " A. L. Dupoyster, " & " "		38 80
	Am't over		3,154 42
" "	Thos. J. Jones, relevy & int. 2 years		114 25
" "	S. D. Chatham, " & " "		11 20
" "	E. G. Neil or assignee, relevy & int. 2 years		53 76
" "	W. J. Venable, " " & " "		2 24
" "	J. P. Hendricks, " & " "		2 24
" "	T. R. Clark, " & int. — years		2 24
" "	E. R. Weir, Jr., " & " "		67 20
	Am't carried to page 334		$3,407 55

[On margin:] Cop'd to sheriff *cop'd*.

The court proceeded *proceeded* to pass on the following claims and make the following levies and appropriation out of the negro fund, viz:

Am't levied for	M. P. Wells; relevied & int. 2 years		$32 48
" "	Daniel Gates, ac. for pauper coffins		10 00
" "	R. C. Frazer, " medicine & all. for paupers		4 00
" "	E. R. Weir, Jr., ass. of S. H. Dempsey		12 00
	To am't to page 335		$58 48

It is ordered that the following be the rates fixed & established for teams working on the public road for the ensuing —, to wit:

302 For 2-horse wagon, team, & driver, per day ---------- $1 50
" 2 " plow, " & " " ---------- 1 50

It is ordered that the following be the rates fixed & established for ferriage across Green, Muddy, and Pond rivers & Cypress creek for the ensuing season, to wit:

Single horse	.10
Horse & rider	.15
Footman	.05
Heavy 4-wheel wagon or coach & driver	.75
Light or open 4-wheel wagon or coach & driver	.50
2-wheel cart or 1-horse buggy & driver	.25
Hhd. tobacco, each	.15
Cattle, per head	.10
Sheep, hogs, or goats, per head	.05

It is ordered that the following tavern rates for the ensuing season be fixed and established as follows, viz:

Diat, per meal	.75
Lodging, per night	.50
Horse or mule to hay or fodder, per day	.50
Horse or mule feed	.50
Wine, gin, brandy, or whiskey, per drink	.15

On motion of R. W. Eades, it is ordered that he be, and is hereby, appointed adm'r of Beverly H. Coleman, dec'd (the widow, by writing, relinquishes her right to act), who thereupon took the oath prescribed by law and executed bond, conditioned according
303 to law, with W. C. Shannon & James E. Coleman as his surety, who are approved by the court.

On motion of R. W. Eades, adm'r of Beverly H. Coleman, dec'd, it is ordered that John Yeargan, Isaac Malone, & W. E. Bridges be, and they are hereby, appointed appraisers of the personal estate of said decedent, any two of whom, being first duly sworn, may act; that the — state within the appraisement the articles and value of each set apart by them to the widow, separate and apart from articles appraised for sale, and report to this court.

The following settlements were exhibited unto court, to wit:
A settlement of John E. Reno, adm'r of Fredrick Graddy, dec'd.
" " " same, " " Martin Kittinger, "
" " " same, " " Lewis Wiggins, "
" " " Joseph Adcock, guard. of John Collins.

Which settlements were examined by the court, having laid over one term for exceptions, and, none being made or filed, is now ordered to be recorded.

The following settlements were exhibited into court, to wit:
A settlement of Jubel Vincent, guard. to J. W. Jarvis.
" " " S. P. Drake, " " Ardelia Drake, now Nall.
" " " Daniel Gates, " " M. A. Shutt.
A settlement of Isaac Wood, " " Mary Jane Hunt.
304 A settlement of H. L. Hays, adm'r, guard. to Z. L. Hays, dec'd.
A settlement of same, guard. to Lucinda J. Hays.
" " " " " " Manerva A. Hays.
A settlement of K. G. Hay & J. J. Plane, exo'rs of J. J. Plane, dec'd.
Which settlements were examined by the court and ordered to lie over one term for exceptions.

J. C. REYNOLDS' HEIRS, Pl'fs,
vs.
E. R. BELL, Def't. } Dower in Land.

The commissioner- filed their report, which was ordered to be confirmed and cause continued until next term for exceptions.

RULE
vs.
Q. E. MCKENNY & Others. } For Costs.

Ordered that the rule be dismissed at *at* cost of the parties.

JOSEPH P. SHORT, Pl'f-,
vs.
JESSE & SUSAN MOORE, Def'ts. } Dower in Land.

The commissioners filed their report, which was ordered to be confirmed and continued until second day of this term for exceptions.

305 COM'TH BY NANCY C. HARRIS, Pl'f,
vs.
ANDREW DIVINE, Def't. } Bastardy.

The defendant, by his attorney, presented a paper, which being proved by the oath of C. B. Wickliffe as having been signed by the said Nancy C. Harris and acknowledged by the said Nancy C. Harris, it is thereupon adjudged by the court that the Commonwealth of Kentucky recover of the defendant the sum of thirty-three dollars & $\frac{33}{100}$ annually for the period of three years from this date, provided the said bastard child of the said Nancy C. Harris shall live; if not, then for the period that said child shall so live, in proportion to the whole am't.
It is therefore further adjudged that the Commonwealth recover her costs about this prosecution expended, and the said Devine is hereby discharged from his said recognizance and this prosecution is stricken from the docket.
On the application of Charles L. Morehead, who suggested to the

court the necessity therefor, it is ordered that James D. Craig, John A. Woodburn, and William Anderson (any two of whom, being first duly sworn, may act) be, and *the* are, appointed viewers to view and mark a way for a change in the road leading from South Car-
306 rollton to Madisonville, as the same passes over the lands of said Morehead and Robert Clark. Beginning at a limestone rock set at the edge of the present road and near the corner of said Robert Clark's wheat field, thence running a general southeast course to the road lately opened by said Charles L. Morehead and near the corner of his fence; thence with said road opened by said Morehead to the Herman road; thence with the Herman road to the present road at a sandstone rock set on the edge of said road near Mrs. Davis' fence; that they view both the old and new routes & report the same by metes and bounds, courses and distances; that they report the conveniences and inconveniences that will result as well to the public as to individuals on account of such change; also the names of the propriators & tenants over whose land the same will pass; that said Craig, as surveyor, make out a full and complete diagram of both routes and return the same with the report of the viewers, and for the incoming of said report this application is continued.

ELIZA E. DAVIS, Pl'f,
vs.
JESSE JOHNSON & Others, Def't-. } Dower in Land.

307 On motion of the plaintiff, by her attorney, it is ordered that Thos. Bruce be appointed guard. *ad litem* for the infant defendants, B. A. Davis, Amo E. Davis, & Samuel G. Davis, who thereupon filed an answer herein. The adult defendants having been duly summoned & failing to answer, it is adjudged that the material allegations of the petition be taken as confessed against them. It is further adjudged & ordered that Wm. Bell, James Wright, & Alfred Johnson be, & they are, appointed commissioners to lay off, assign, & allot to the plaintiff, Eliza E. Davis, one-third first part in value of the five tract- of land in the petition & deeds mentioned & described as her dower therein. Said com'rs or any two of them after being duly sworn may —; that they report the quantity so laid off by metes & bounds & by courses & distances, and also make out & return with said report a diagram of the same & of the tract or tracts out of which the same is taken. They will meet at the residence of the plaintiff on the 15th day of Dec., 1868, & from thence proceed to execute this judgment. Leave is given the com'rs to withdrawn the deeds filed to be used in making the allotment aforesaid. S'd comm'rs may in their discretion lay off & allot s'd dower from one of said tracts; said dower to be laid off in
308 such a manner as to include the mansion house & its appurtenances, and the same is continued.

JESSE JOHNSON, &c., Pl'f-.,
vs.
ELIZA A. DAVIS, Def't } Judgment.

On motion of plaintiffs, by their attorney, it is ordered that Thos. Bruce be appointed guard. *ad litem* for the infant defendants, B. A. Davis, Ann E. Davis, & Samuel G. Davis, who thereupon filed an answer herein. The def'ts having been duly served with process, it is ordered that Thos. Bruce be, & he is hereby, appointed guard. *ad litem* for the infant def'ts, B. A. Davis, Ann E. Davis, & Samuel G. Davis, who filed therein his answer, and, the other defendants failing to answer, it is ordered that the material allegations of the petition be taken as confessed as to them; and it is also further ordered & adjudged that the pl'fs are entitled to a division & a conveyance of the land mentioned & described in the petition & deeds, and that James Wright, William Bell, & Alfred Johnson be, & they are, appointed commissioners to make the division, who or any two of them, after having been duly sworn, will proceed to lay off
309 to the plaintiff-, Jesse Johnson & S. A. Johnson, his wife, one-sixth of said five tracts of land, taking into consideration quality & quantity; that they lay off to A. A. Johnson & M. F. Johnson, his wife, & to David James & J. C. James, his wife, & to the def'ts, B. A. Davis, Ann E. Davis, & Samuel G. Davis, each *on* sixth of said laid, said division to be made subject to Eliza E. Davis' dower. The said commissioners will meet at the residence of Ann E. Davis on the 16th day of Dec., 1868, and will report a plat, with the metes & bounds, courses & distances, of the land allotted to each of the parties, & this cause is continued.

STATE OF KENTUCKY,
County of Muhlenburgh, } *sct:*

I, W. T. Stiles, clerk of the Muhlenburgh county court, do certify that the foregoing are true copies of the orders made on the 30th day of November, 1868, as appears of record in my office.

Witness my hand this 8th day of January, 1886.

W. T. STILES, *Clerk.*

310 The deposition of Henry Green Newman, taken on behalf of complainants, is as follows, to wit:

Deposition of Henry Green Newman.

Question 1st. State your name, age, residence, and occupation.

Answer. My name is Henry Green Newman; my age is 57 years; I reside in Muhlenburgh, Ky., and by occupation am a farmer.

Ques. 2. State all you may know about this case.

Answer. I was commissioned a justice of the peace some time in 1867, and was in the office continuously until 1871. I was a magistrate or justice for district No. 5, known as Meyers or Wild-Cat. I am H. G. Newman noted as present in the record of the November term, 1868, and, outside of the record, I distinctly remember being

present at that term. I have read over the proceedings of the November term, 1868, as they are entered of record 1868. I
311 don't remember any business of the court that *that* by law required the attention of the magistrates or to which their attention was called, except the auditing the claims against the county and fixing the county levy. I have no recollection of the order appointing S. P. Love to have bonds printed, as purports to have been done in one order of that term. I generally recollect about this railroad affair, and if my attention had been called to this order or if I had been asked about it at the time I would now remember it, as I paid a good deal of attention to it, it being an affair of some importance. On the day they voted the tax I went to the polls to vote against the tax, but after I got there I was pursuaded by friends of the proposed tax to vote for it. Among the parties who visited that district to insist on voting for the tax were M. J. Roark and E. W. Martin. If the order appointing Love to have the bonds printed had been presented to me as a justice of the peace I would have opposed it, because the justices had not ordered the election—had been excluded in any participation—the whole matter having assumed to be executed and performed by the county judge alone, the justices of the peace at that time not being recog-
312 nized, expected, or asked to have anything to do with the matter at any stage of its progress until the justices of the peace were asked at the court of claims of 1869, November term, to allow Mr. Bruce, the clerk of the county court, a certain sum of money for signing the bonds. At first a majority of the justices were against making the allowance, but B. E. Pittman, the county attorney, and S. P. Love, the county judge, were for allowing it from the start, and Pittman made a speech, if I remember correctly, insisting on us to make the allowance. I was against allowing any of it, and so voted. I told Bruce I thought one-half of the sum was more than sufficient. The county attorney was the paid attorney to advise the justices of the peace and the county judge in such matters as to making allowances. On the final vote on this particular allowance the vote stood seven for and five against allowing it.

To the best of my recollection, I was summoned to appear for some purpose, for which I don't know, at the August term, 1869. When I got there I went immediately to court-house and stood around until 12 o'clock waiting for the county judge to have us called
313 in; but when I saw him, about 12 o'clock, when they adjourned for dinner, he told me that they did not need the justices; that he was through the business for which he wanted them and did not need them further. I have no recollection of any of them being called in after dinner. I don't think I was an officer of the election held for the purpose of voting a tax for the Elizabethtown and Paducah Railroad Co. May 30, 1868. I have been an officer of so many elections that I don't remember. I think they were voting when I got to the polls, but upon the attorney for the respondents showing me the poll book of the election held for precinct No. 5 on that day I see that I was one of the judges, and that my name is signed to the certificate of vote cast as one of the judges.

The court of claims for November, 1868, allowed an appropriation for all the officers holding the said election of May 30th, 1868.

I paid the railroad tax or tax levied to pay the interest on bonds of the Elizabethtown & Paducah railroad and think I paid for about 5 years. I did not pay them voluntarily, but the sheriff had the receipts and I had to pay them.

Further this deponent sayeth not.

HENRY G. NEWMAN.

314 The deposition of Sterling Mansfield Eaton on behalf of complainants is as follows:

Deposition of Sterling Mansfield Eaton.

Question No. 1*st* by attorney for complainants. State your name, age, residence, and occupation.

Answer. My name is Sterling Mansfield Eaton. My age is 55 years; reside in Muhlenburgh county, Ky., and am a farmer by occupation.

Ques. 2. Have you ever been a justice of the peace for Muhlenburgh county? If so, for what district and how long were — in commission?

Ans. I was commissianed a justice of the peace in 1860 for district No. 2, or known as Boggess precinct, and was in commission until the 24th day of February, 1864, when I moved out of the precinct into precinct No. 6, or Summers precinct, and in 1867, I think, I was elected and commissioned a justice of the peace for that district and held the commission for 8 years, or until 1875. I will not file any of my commissions herein, as the attorney for the respondents says he will waive it.

Ques. No. 3. State whether or not you were present at a court
315 of claims for Muhlenburgh county, Ky., and was one of the bench as a justice of the peace before whom claims against the county for action were brought and submitted. If you say you were, state all that you recollect that transpired in regard to the claim preferred by one Bruce, a clerk of the court, for signing the bonds of Muhlenburgh county issued to the Elizabethtown and Paducah railroad.

Ans. My recollection is that I was present at that term of the court. I can't state all that passed at that term of the court, but I do recollect that some one presented the claim of Bruce for signing the bonds spoken of in your question, and the whole matter was discussed at some length in the presence of the justices. After they had been talking of it some time the county attorney, B. E. Pittman, made a talk to the magistrates and told them the services of Bruce would amount to that much as laid down by law, and that they would have to pay it and had bettter pay it or Bruce could compel them to pay it or levy by a mandamus. I, for one, was somewhat surprised at the remarks made by Pittman, as he was county attorney; but I took it that he thought he was correct, as he was county
316 attorney, and thought he was honest. After considerable discussion, the vote was finally taken and it was carried;

what the majority is I don't know. I, for one, — allowing the claim, as I thought it was too much, and think I voted against it. If I voted for it at all it was because the county attorney had advise-us to vote for it; yet, at the same time, I thought it unjust.

It is agreed between the counsel that what the county attorney referred to in his statement about the law, that under the statutes of Ky. in force at that time that for each seal of the county court, when used by the county court clerk, he was allowed the sum of 50 cents, and his fee for affixing the seal to each instrument or bond, and that that were 2,300 bonds issued, to each of which he affixed his seal, and which, if calculated under law, would amount to $1,150.

I don't think I was one of the officers at the election held at Summers precinct May 30th, 1868, on the question of voting a subscription to the Elizabethtown and Paducah railroad, though I am not positive about this. Since making the above statement the attorney for the respondents has shown me the poll book for the Summers precinct, or No. 6 precinct, for the election held
317 May 30th, 1868, and I see my name is attached to the certificate of election, which I recognize as my handwriting; so I now see from the record that I was one of the officers of the election. I think I was present at the court of claims held November the 30th, 1868, and December 1st, 1868. I have no recollection that the county court, composed of the justices of the peace, made an appropriation then for the purpose of paying the officers for holding the electior of May 30th, 1868. I see by the record of the proceedings held at that time that an appropriation was made for the officers holding said election, myself among the number. I cannot now recollect, outside from the record or without having my attention called to the record, any appropriation or order made at the November term, 1868.

Further the deponent sayeth not.

STERLING MANSFIELD EATON.

The deposition of John M. Williams, taken on behalf of complainants, is as follows:

Deposition of John M. Williams.

Question 1st by attorney for complainants. State your name, age, residence, and occupation.

Answer. John Milton Williams; am 62 years of age; re-
318 side in Central City, Muhlenburgh county, Ky., and at present am keeping a boarding-house.

Ques. No. 2. State when you became a justice of the peace for Muhlenburgh county, and how long you remained as such and for what district.

Ans. I think I was commissioned a justice of the peace for district No. 2, known as Boggess, some time in 1866 or 1867, and was a justice for about 4 years, or until 1870. As the counsel for respondents waive the production of my commission I will not file it herein.

Ques. No. 3. State whether you remember any election held in Muhlenburgh county for the purpose of taking the sense of the *of the* people as to subscription of stock to the Elizabethtown and Paducah railroad, and under what officers the order of said election was held, and whether you voted at said election; and, if you voted, how you voted.

Ans. I remember that there was an election in Muhlenburgh county for the purpose named in your question some time in 1868. I don't know who ordered this particular election. I suppose it was the proper officers qualified by law. I voted at said election and voted for the tax or subscription of stock.

319 Ques. No. 3. State whether you attended November term, 1868, of the Muhlenburgh county court of claims.

Ans. My recollection is that I did.

Ques. 4. Please examine the record book No. 8 of the Muhlenburgh county court, *of* page 336, and state what you may know about the order appointing S. P. Love to have the bonds of Muhlenburgh county of $400,000.00 printed, and also relate all you may know about this case.

Answer. As above stated, I was present at that term of the court and don't remember anything of the order appointing S. P. Love, the county judge, to have printed the $400,000.00 of bonds of subscription to the Elizabethtown and Paducah railroad. I never heard anything said about the order at that term. I have heard this order spoken of in the last few years, but this is the first time I have ever seen it. The justices were never asked at that term to act on any matter connected with the bonds or subscription of stock to the Elizabethtown and Paducah railroad. If the justices had been called on to act on the railroad or bond matter I am satisfied I would not have forgotten it, as it was a matter of considerable importance.

320 Ques. No. 5. Examine same record book, on page 419, and state all you may know about the claim of Thos. Bruce, clerk of Muhlenburgh county, for seals on railroad bonds to the E. & P. Railroad Company.

Ans. I was present at the November term, 1869, of the Muhlenburgh county court of claims when the claim referred to in the question was presented. There was considerable confusion about it and a great deal of arguing over it. Mr. B. E. Pittman, the county attorney, made a speech in favor of allowing the claim, and after that M. D. Hay, who was attorney for Bruce, made a long speech, and it was finally allowed. I don't know how the vote stood, but I voted against it myself, because I had talked to the county judge, S. P. Love, a few days before, who told me that Bruce had made out his claim for affixing the seals; that it was for $300.00 or more; that he had seen the account, and that he thought it was too much, but on the day we met and discussed it S. P. Love did not say anything about it being too much, although the sum was larger than Love had spoken of a few days before.

Ques. No. 6. I now call your attention to the same order book

No. 8 of the Muhlenburgh county court—to page 398—
321 wherein will be found the proceedings of the August term, 1869, of the Muhlenburgh county court, and to the interlineations of the names of the justices of the peace. Please examine the record and state if there was any business transacted at that term which required the presence or action of the justices of the peace, and state whether you were present at that term of the court and if your name is down there properly.

Ans. I see one piece of business only on the order book of the proceedings of that day which required the attention of the justices, and that was the appointment of Gish, Baker, and Bodine as cadets to the Agricultural College at Lexington, Ky. We were summoned to appear for this purpose alone, and after we transacted it we immediately went out of the court-house. The order reciting Bruce's report of subscribing 4,000 shares or $400,000.00 to the Elizabethtown & Paducah railroad was never presented to the justices at that term of the court, and I never heard anything said of it at that term or on that day. We were there but a very short time, as we had only the business of appointing the cadets to transact. Judge
322 S. P. Love made us a little talk and requested us to appoint Bodine as a cadet anyhow to please him, as Bodine had been a soldier boy under him, Love, in the war and he wished him appointed; that after that they might appoint whom they pleased. After we got through this particular business of making the appointments of cadets the county judge then remarked he had nothing else for us to do, and we then went out. I would not remember the names of any of these cadets, but do remember particularly the name of Bodine, as Love made such an earnest little speech in his favor, saying Bodine had been one of his soldier boys and he wanted to see him appointed.

Ques. No. 7. When holding court of claims was the court held in the same room as where the county judge was holding his court and while you were transacting your business of making levies and allowing claims? Did not the county judge transact the business which belonged to his department alone and at the same time?

Ans. We held our court and transacted our business as a court of claims in the same room where the county judge was holding his court and transacted his business. The justices of the peace attended the business of making allowances and levies; the
323 county judge sometimes looked over the accounts and made suggestions and voted whenever there was a tie. I don't think he voted at any other time, and the county attorney was the one that was required to keep us posted as to claims against the county, and while we were engaged in the business of looking over claims against the county the county judge did entertain and transact business that was brought before him and that was in his jurisdiction.

Cross-examined for respondents:

Question 1. Can you give a single instance or name an order which was made by the county judge alone while the justices of the

peace were present and sitting as part of the county court? I mean can you name one without looking at the record.

Ans. I don't suppose I could.

Question 2. Can you say, of your own knowledge, without referring to the record, that the county judge ever made any order within his exclusive jurisdiction when the justices of — peace were present and forming a part of the court? If you can, please name one.

Ans. He very often transacted business belonging to his exclusive jurisdiction at the time we were engaged in our busi-
324 ness. I remember very distinctly, but to recall any particular order he might have made at that time or times I could not now do, but I see from the record that he did make orders of cases in his exclusive jurisdiction while we were engaged in our business as a court of claims.

Ques. No. 3. How can you tell from the record or anything else that the orders referred to were made by the county judge whilst the justices of the peace were engaged in transacting other business?

Answer. The orders of record show that they were made on the day that we were transacting business. The county judge acknowledged to me that he did transact business of his department while we were transacting our business. He said, too, that he generally notified the court—that is, the justices—that he made these orders. He further said that he sometimes notified them verbally and sometimes in writing.

Question 4. Is it not a fact that when the court of claims or levy court, which was composed of the county judge and a majority of the justices of the peace of Muhlenburgh county court in commission, held their sessions that said judge and justices occupied
325 the same room and were seated very near to and within hearing distance of each other?

Ans. It is a fact.

Question 5. Is it not a fact that said courts, as mentioned in the preceding question, were presided over by the county court judge, and did not said judge, when the vote was taken by said court on the question as to whether any appropriation was to be made or any claim ordered to be paid or rejected—that said vote was called for by the judge?

Ans. The county judge was always present and presided over the court. I don't remember who put the vote, but I suppose it was the county judge.

Question 6. State whether or not you were one of the officers who held said election on the 30th day of May, 1868, when the question was submitted to the voters of Muhlenburgh county as to whether or not the Muhlenburgh county court should subscribe for four thousand shares, $400,000.00, of the capital stock of the Elizabethtown and Paducah Railroad Company.

Ans. No, sir; I was not. I was appointed to serve, but did not get to the polls in time.

Question 7. State whether or not you were a member of the

Muhlenburgh county court held on the 30th day of November,
326 1868, and which was held by the county judge and a majority of the justices of the peace of Muhlenburgh county in commission as a court of claims.

Ans. I was there on that day.

Question 8. Is it or not a fact that on said day that said court, while composed of the said county judge and a majority of the justices of — peace — Muhlenburgh county in commission, made appropriations to pay the officers who held the election referred to in question 6 in this deposition propounded to you by counsel for respondent herein?

Ans. Yes; I suppose they did; but I don't remember it.

Question 9. What time of the day was it when you became a member of the Muhlenburgh county court on the 30th day of August, 1869? I mean the day you say that Ira Bodine, Baker, & Gish were appointed as cadets to the school at Lexington, Ky.

Ans. My recollection is that it was in the forenoon.

Question 10. Tell how many of the justices of the peace *of the peace* were present and sitting as members of the court at the time said Bodine, Baker, & Gish were appointed by said court as cadets to the school at Lexington, Ky.

Ans. I could not state positively, but there was a bare ma-
327 jority—about 7. I think there was a bare majority present all [illegible] the same time.

Question 11. How many of the justices of the peace of Muhlenburgh county in commission were present and sitting as members of the county court at the November term, 1869, held on the 1st day of December, 1869, when the allowance was made by said court to pay Thos. Bruce $1,150.00 for signing and putting seals on 2,300 bonds issued and known as the Elizabethtown & Paducah railroad bonds?

Ans. I don't remember, but I suppose most all of them were present.

Question 12. State whether or not you heard any justice of the peace at that term of the court give any reason why said claim *to* should not be allowed to said Bruce, except that the amount asked for was too much.

Ans. The great objection was that Bruce had charged more than his services were worth. The matter was not discussed as to the validity of the bonds—at least if there was any discussion about the validity or invalidity I don't now remember it.

Question 13. Were you present or did you sit as a member
328 of the Muhlenburgh county court on the 30th day of August, 1869, after 12 o'clock on said day?

Ans. I was not in there after 12 o'clock is my recollection.

Question 14. You say, in answer to question propounded by counsel for complainants, that said claim allowing said Thos. Bruce $1,150 for signing and sealing said bonds was finally allowed. Now, do you mean by that or not that said claim was passed upon and an appropriation made to pay *to* said claim by a majority of the said justices of the peace then sitting as members of said court?

Ans. That is what I mean.

Re-examined by complainants:

Ques. 1. You stated your objection to the Bruce claim was because it was too much, and that you voted against it for that reason. By answering the question this way do you mean that there were no other justices of the peace who voted against the claim because of their opposition to the recognition of the validity of the bonds in any way?

Ans. I spoke only for myself. There may have been magistrates who opposed it for other reasons than those which influenced me.

329 Question 2. You state the county judge, Love, acknowledged to you that he did transact business in his department while you, the justices of the peace, were transacting your business; also that the county judge said to you that he generally notified the court—that is, the justices—either verbally or in writing, when he made orders. State to what orders Love referred to in the conversation you refer to as having had with him, and is — a fact within your own recollection or memory that he called the attention of the justices of tho peace to business transacted within his own exclusive jurisdiction or which was considered as transacted within his own jurisdiction, or that he ever asked the justices of the peace to act upon such matters, and did the justices of the peace, so far as you can state, act upon such matters, and, if the county judge had done so, would the justices have felt called upon to take action in the particular premises.

Answer. He said that he himself had made the order in regard to the subscription of stock to the Elizabethtown and Paducah railroad on the day the cadets were appointed. This is what I meant and what he referred to in the conversation about orders.

330 He did not claim that he had called our attention to this order. I don't remember that he ever did call our attention to the order. If the county judge had called upon us to attend to any of the matters within his exclusive jurisdiction or considered by us in his exclusive jurisdiction I don't think the justices would have felt called upon to attend to it, as they thought it belonged to the judge's exclusive jurisdiction, and they didn't suppose they had a right to have any say-so in it.

Further the deponent sayeth not.

JOHN MILTON WILLIAMS.

The deposition of M. J. Roark, taken on behalf of complainants, is as follows:

Deposition of M. J. Roark.

Question 1st by attorney for complainants. State your name, age, residence, and occupation.

Answer. M. J. Roark; 53 years of age; residence, Greenville, Ky.; occupation, lawyer.

Ques. No. 2. I have before me now an article or communication in Muhlenburgh Republican in its issue of Thursday, July 22nd, 1886, purporting to be signed by M. J. Roark, to which I now call your attention. Are you the same M. J. Roark that wrote
331 and had published the said communication, the same I now submit to you for inspection? If you say that you are, will you please to make the same as a part of your answer herein, as a part of this your deposition, and also say whether the statements therein set forth are true?

Answer. I am the M. J. Roark who wrote and had published the article or communication referred to and exhibited or submitted to me for examination. The matters of fact stated in said article were written by me with the "acts" of the Kentucky Legislature before me at the time of writing and are true. The matters of opinion that may be contained in said article or communication are mine, deducible from and based upon the two "acts" of Legislature referred to. The matters referred to as my information, &c., are true, as I had the information and as my memory served me then and serve me now. I file said article or communication as an exhibit of this deposition. There is some change in phraseology in the first eight lines from the manuscript furnished by me, but no change in substance, being only in proper names.

Question No. 3. In the said article spoken of you refer to 2 acts of th Legislature of Ky. concerning aid to the Elizabeth-
332 town & Paducah Railroad Company. State whether or not the distinction you have laid down in said article between the 2 acts of the Legislature therein mentioned have been correctly taken by you so far as you in the said article attempt to compare them. Please refer to the said acts as a part of your deposition herein, and ask that the same may be read in connection therewith from the printed acts of the respective sessions referred to, as fully as though the same were set at large and in *hæc verba* in your answer.

Answer. In so far as I am able to understand the construction of the two said acts the distinction is correctly taken by me in the article or communication filed, as far as I compared the two acts of the Kentucky Leglislature referred to by me in said communication. I do here refer to the two acts of the Kentucky Legislature so referred to by me, and request that they may be read in connection with this deposition—I mean from the printed acts of the respective sessions referred to by me—as fully as though the same were set out at large and in *hæc verba* in this answer.

Ques. No. 4. In the article to which your attention has been called and which you make an exhibit to your deposition,
333 you state that you voted for the county aid to the said company, or, as you express it, the tax, under the same mistaken belief that others did. You further state in the same connection that the first bill had been published and *and* discussed for months; that the other had not been published at the time of the vote. Now, are those facts as you have stated them in the said article true? Explain especially as to this matter of publication; also

please state whether or not, when the judge of the county court was asked to order an election as to this county aid, the last act had been published and whether the act was submitted by the corporation to the county judge in its entirety or only so much of it as conferred upon the company the right to demand a submission of the amount prescribed by them.

Answer. I mean in the article referred that I was mistaken in my belief *of* the act of 1867 was the one that had been published in book form, *and* because I had no knowledge that the act of 1867'–8 was in existence, and the reference that hundreds of others were voting under the same mistaken belief was based upon
334 general rumors and expressions soon after the vote was taken. What I meant by "published and discussion" was that first act had been published in book form—printed, if you please—three to five months prior to said election, and that the question of voting aid to the county was with the knowledge of the existence of said first act. I cant't say that there were or were not any public meetings or discussions with specific reference to said first act, or indeed before the order of court submitting the proposition to a vote. I meant to say that the said second act had not been printed or published in book form. I made that statement upon the idea that ordinarily the "acts of Legislature" are not so published within three or four months after adjournment; can't say of my personal knowledge whether said second or last act was submitted by the corporation to the county judge in its entirety or only so much of it as conferred upon the company the right to demand a submission, or whether either was submitted to county judge. As I stated in the article filed herein, I had such information as I stated, by which I meant that such was the talk among some of our people about the time the bonds were issued.

335 Ques. No. 5. For what session were you a member of the Legislature of Ky.? And state whether or not you attended during that session and whether or not you became familiarized with the law regulation the distribution to the counties of the acts passed. If you — that you did then become — as to the publication and distribution of the legislative acts, state how the acts of the Kentucky Legislature of the session of 1867 and for the session of 1867 and 1868 were published and distributed to the people of the State of Kentucky.

Ans. I was elected in August, 1865, and served in the "session" of 1865–'6 and the session of 1867. I was present during the whole of both said sessions of 1865–'6 and 1867. As regards the "law" or method regulating the publishing and distribution of the laws to the counties, I say that ordinarily I think each Legislature provides by resolution that a given number of copies of the "acts" passed by it shall be published and distributed—a copy each to all the county officers, including justices of the peace, in each county and a copy to each member of the Legislature. The acts of 1867 were published, I think, under such a resolution; can't say how the
336 acts of session of 1867–'8 were published, but presume under some such resolution. Without being specific, I will say that

I think it is ordinarily two or three months after adjournment of Legislature until said acts are ready for distribution. By county officers I mean circuit court clerk, county court clerk, county judge, and, I believe, county attorney, all of whom usually reside and do have their office at county "seat;" justices of the peace have their offices in the respective districts of the county—two justices in each magisterial district.

Ques. No. 6. Now, without the publication and distribution of the laws in which you have stated, what opportunity had the people of Muhlenburgh county of knowing or ascertaining the legislation of the session of 1867 and 1868, and especially of the act or acts of 1867–'8 touching their interest in the matter of county aid to the Elizabethtown and Paducah railroad?

Answer. I know of none, unless some person had had the same published in pamphlet or other form, in newspapers or by instruction by individuals. If either of such means were employed or resorted to I have no sort of recollection of it. I think if such had been the case I would have known it; may not, however.

337 Ques. No. 7. Can you state whether or not at the time the vote was taken in the county in regard to the Elizabethtown and Paducah railroad there had been printed and distributed to the county of Muhlenburgh the acts of the session 1867–'8, to which you have referred, and state whether or not that at any time during the years 1867 & 1868 there was published any newspaper in the county of Muhlenburgh? If you say there was such newspaper published, state the name of it.

Answer. I can't state whether such acts of 1867–'8 had — printed or distributed prior to such election. I don't think there was any newspaper published in Muhlenburgh county *county* in 1867 or in 1868.

Ques. No. 8. If such acts had been printed and published and distributed, as I inquired about in the last foregoing question, prior to the election for county aid to the said railroad, considering your professional relation, the fact that you had been a member of the Legislature the 2 preceding sessions, and the interest you took in the matter of the subscription, is it or not probable that if the acts of 1867–'8 had been published and distributed in Muhlenburgh county prior to that election that you would have known it?

338 Answer. I think it very probable that I would have known it.

Ques. No. 9. You have stated that you, as well as others, voted for the subscription by the county to the said railroad believing that you voted it under the provisions of the act of 1867. Please state whether or not your position was such as to acquaint you very generally with the idea of the people who voted for the subscription—as to the provisions of what act the same was to be made and administered. If you say you were so acquainted, give your estimate of the number of those voting for the subscription, who voted for it on the assumption that the subscription was made under the provisions of the act of 1867. State also in what district you voted yourself and with the voters of what district or districts voting for

this subscription you were most familiar; also state all other circumstances which you may know that will throw any light upon this point to which this question is directed.

Answer. I can't state at this date that I was acquainted generally with the idea of the people who voted for the subscription, as
339 to the provisions of which act the same was to be made, nor can I form any sort of estimate of number who voted on assumption that the subscription was made under provisions of the act of 1867; can say no more on the subject than I have already stated in this deposition. I voted then & do now in district No. 3, or Court-House district. I presume I was about equally familiar with the voters in district- No. 2 and No. 3, both voting in Greenville; knew a great many in all the districts of county.

Cross-examined by M. C. HAY, counsel for respondents:

Question 1. Is it not a fact that the question as to whether or not the Muhlenburgh county court should subscribe for stock in the Elizabethtown and Paducah Railroad Company and issue its bonds in payment therefor was talked of and generally discussed by the people of Muhlenburgh county for several months before the election was held on said question on the 30th day of May, 1868?

Answer. The form in which the matter was discussed was the question of voting a tax to aid in building said road, the bonds of the county to be given in exchange for stock in the rail-
340 road company, the general statement being you simply bond the credit of the county in order to assist in constructing the road. Such was the talk for months prior to election; can't say as to public meetings on the subject.

Question 2. Examine the act of 1867 referred to by you and state if there is not a provision in said act authorizing any county through which the Elizabethtown & Paducah railroad might pass to subscribe for stock in said Elizabethtown & Paducah Railroad Company upon petition of a majority of the qualified voters therein, and is — or not a fact that prior to the time that said election was held on the 30th day of May, 1868, that petitions were circulated throughout Muhlenburgh county, Kentucky, and signed by a majority of the voters of said county requesting the county court of Muhlenburgh county to subscribe for $300,000.00 of the capital stock of said Elizabethtown & Paducah Railroad Company and to issue and deliver the bonds of said county in payment thereof at par, due thirty years after date, bearing interest at the rate of six per cent. per annum.

Answer. There is such a provision in said act; may have
341 petition paper circulated for petitioners or signers to subscribe $300,000 to stock and to be delivered to company for bonds. I don't now, however, remember that such was or was not the fact. Will say, however, it is quite probable that such was true under said act; can't say how many signers were to such petitions. I will state that I remember that such petitions were circulated under provisions of a bill incorporating the Owensboro' and Russellville Railroad Company. I had charge of such petition for

benefit of that road; was myself more interested in that road than the other; may have had a petition for other road, but can't now say that I had or had not.

Question 3. Was there not a vigorous contest and was there not a violent opposition to the proposition at the time, when the question was submitted to qualified voters at said election held on the 30th day of May, 1868, whether or not the Muhlenburgh county court should, for and on behalf of Muhlenburgh county, subscribe for 4,000 shares, $400,000.00, of the capital stock of said Elizabethtown & Paducah Railroad Company?

Ans. I can't say that there was or was not a vigorous con-
342 test. There was, I believe, considerable opposition in the north part of the county. In my district it was unanimous, as I remember, with one bare exception, — being but one vote cast against the proposition to "tax."

Question 4. With your knowledge of the people of Muhlenburgh county, Kentucky, their peculiarities, and the distance some of the voters reside from the voting precincts, which would have been the easiest plan to have secured the directions of the voters directing such subscription to be made by the county court of Muhlenburgh county, Kentucky, the proposition by petition for a majority of the voters of said county or the proposition by election, which only required a majority of the votes cast?

Answer. I can't say positively. Probably, as provided for by the act of 1867, that a majority of all the voters in county should sign the petition. It would be easier to secure the legal sanction of the people to the subscription by an election requiring over a majority of the votes cast. Such is my opinion.

Question 5. Is it not a fact that at the time said election was held, on 30th day of May, 1868, & for some time prior to that date, that both the representatives from Muhlenburgh county and
343 the senator from Muhlenburgh and Christian county, in the Legislature of 1867–1868, both resided in Greenville, Ky., & that both of them were practicing lawyers and well known to the people of Muhlenburgh county, Ky.

Answer. Yes, sir.

Question 6. Were you present on the 15th day of May, 1868, or at any time when the president of the Elizabethtown & Paducah Railroad Company requested the county court or the judge of the county court to submit to the voters of Muhlenburgh county the question as to whether or not the county court of Muhlenburgh county should for & on behalf of said county subscribe for four thousand shares, $400,000.00, of the capital stock of said Elizabethtown & Paducah Railroad Company? & if you were, tell what — said & who was present and what took place there then.

Ans. I was not present at the time it was submitted nor at any time. As stated by me before, I have no personal knowledge of the matter; but all I know was from general rumor some time after the vote was taken on the question of subscribing the stock to road and know nothing of what took place then between said parties.

Re-examined by attorney for complainants:

344 Ques. 1st. You, in answering the question propounded by attorney for respondents, say, in substance, that it would have been easier to obtain the consent of the people of the county to a subscription of stock to a railroad by only requiring for the subscription a majority of the votes cast instead of by petition requiring the signature by a majority of the vote-s in the county. Do you mean to be understood as saying that taking a majority of the votes cast is at any time obtaining a consent of the majority of the people of the county, and especially is this so, so far as Muhlenburgh county is concerned, in regard to the subscription to the Elizabethtown and Paducah railroad, in view of the facts that you have heretofore stated, that you and many others voted under the impression that the subscription was made under the act of 1867, and that the act of 1867–'8, under which the subscription is claimed to have been made, was not accessible to the people for their information and instruction by reason of the non-distribution of the acts of that session of the Legislature before said election?

345 Answer. I mean that, in my judgment, it is easier to obtain a majority of the votes actually cast to be cast in favor of a proposition to subscribe stock in a railroad company, or for any other proposition, than it is to secure the signatures of a majority of all the vote-s in the county.

In my judgment, a majority of the votes cast for or against any proposition or question is not a correct test of the real sense of the people unless such a majority is an actual majority of all the voters in the county; can't say whether it is or is not especially so in the vote of Muhlenburgh county in the vote upon proposition to subscribe stock in the Elizabethtown and Paducah Railroad Company, because I can't say that. I can't say that I know the sense of all those who were then voters in the county, but will say that I certainly do not regard it as — exception, especially in view of the stated circumstances connected with said election. I mean the uncertainty of which act the vote was taken under, because of non-distribution of the acts of Legislature passed at its session of 1867–'8.

346 Ques. No. 2. You, upon cross-examination, are asked to state, and you accordingly do state, that there was more or less of public discussion and more or less of public bruit in regard to this subscription. Say whether or not this discussion was as to the subscription under the act of 1867, and whether or not you, with all your opportunities of knowing, ever heard the subscription discussed as under the act of 1867–'8.

Answer. I will say that all the discussion of which I have any knowledge, as I can now remember, was under the provision of the act of 1867. As stated by me before, I do not remember that there were any public meetings for discussion under that act; may have been, however. Upon reflection, I desire to modify my answer to question No. 2 of cross-examination by stating that the petitions to voters of county to subscribe stock in railroad company were to secure signers to petition county court to subscribe stock in the

Elizabethtown and Paducah Railroad Company, and not the Owensboro' and Russellville Rail- Company, as I thought at — time answering said question on last Saturday, but I can't state what the result of such petitions was nor how many signatures were obtained. These petitioners were circulated prior to the election held under act of 1867–'8 and before the passage of said act of 1867–'8.

347 Ques. 3rd. You are asked to state and do state that the senator of the senatorial district of which Muhlenburgh county was a component part, and that the representatives of the latter county resided in Greenville, the county-seat of the county. State who they were.

Answer. The senator was Hon. F. M. Allison; the representative was Hon. M. D. Hay, both now dead.

Further this deponent sayeth not.

M. J. ROARK.

The exhibit marked "M. J. R." and referred to in M. J. Roark's deposition is as follows, to wit:

EXHIBIT "M. J. R."

GREENVILLE, *July 20th.*

The Echo last week, in an article which intended to fix the responsibility for the railroad tax and the consequent bad financial condition of our affairs, makes so many statements that are not borne out by the facts that I am impelled to write you this letter. First I wish to state that the Republicans are not responsible for the tax, because Capt. M. J. Roark was not the member of the Legislature from Muhlenburgh county when the bill under

348 which vote was had was introduced and passed, submitting the question to the vote of the people. Hon. M. D. Hay was the member from Muhlenburgh county. He was a Simon-pure Democrat, and the Echo is therefore estopped from controverting the charge that the Democrats are responsible for the tax and consequent financial condition of our affairs. There are but two acts on the proposition to submit the question of tax to the people. The first you will find in Session Acts of 1867, vol. 2, pages 425–'6, approved March 9, 1867. The other one you will find in Session Acts of 1867–'8, vol. 1, pages 622–'33, approved Feb. 24, 1868.

The first simply gives the county court the right to submit the question of tax to the people; gives the court full discretion in the matter; leaves with the court the right to fix the amount to be subscribed, the terms on which, the time when to be submitted, the length of time of notice, etc.; requires the railroad company to deliver stock of its company at par for any bonds issued by county court. It confers no authority on the company to issue its bonds for millions of dollars and mortgage the road to secure the payment. It give- no lien on the land and homes of our people to se-

349 cure the tax voted. It makes no discriminations against the poor man, but requires the company to issue stock to all tax-

payers for the amount of tax paid by each. It leaves all questions of collecting taxes to the county court.

The second act repeals the first and makes no provisions requiring the company to give stock at par for bonds. It gives arbitrary power to the railroad company to cause the county court to submit the question to subscribe stock, and that, too, upon such terms, conditions, and for such amounts as the company may dictate; gives a specific lien on our land and homes to secure the payment of the tax; provides for levying a direct tax and discriminates against the small tax-payer; provides for the issuing of stock in the road to those only who shall have paid taxes to the amount of $100, and then on certain conditions; empowers the railroad company to issue its bonds to the amount of eight millions of dollars, mortgage the road and its franchises, sell said bonds, raise millions of money, allow the mortgage to be foreclosed, the road and franchises to be sold, wreck the whole concern, and laugh at its victims—all of which has been done.

The Republicans are responsible for the passage of the first act, with its liberal, conservative, guarded provisions, "because
350 Capt. M. J. Roark was the member of the Legislature from Muhlenburgh when *when* it was introduced and passed."

The Democrats are responsible for the second, with all its monstrosities, liens, and iniquities and for the tax, "because Hon. M. D. Hay, a Democrat of the first water, was the member in the Legislature from Muhlenburgh county when it was introduced and passed." Did I vote for the tax? Yes; under the same mistaken belief that hundreds of others did. The first bill had been published and discussed for months; the other had never been published at the time of the vote. After its passage, but long before it could have been published in the regular order of such matters, the board of directors held a meeting and resolved to demand a vote on the proposition of subscribing $400,000.00 without conditions save the one that the road should be constructed within one mile of the Greenville court-house, and, as I am informed, armed with a manuscript copy of that part of the bill which confers upon them autocratic power in the matter, they demanded of Col. Love and county court that the vote be taken, giving fifteen days' notice of time of election. So, in fact, we voted for the tax under the provision of the first bill; in law, under the
351 provisions of the second. Soon after the election the fraud and swindle of the company was discovered. Messrs. Smith and Roark were consulted by some of the tax-payers, and they submitted to them a proposition, stipulating to associate with them Hon. M. D. Hay, and for a fee of $15,000 rid the county of the affair of the bonds and taxes—"no cure no pay."

The proposition was rejected, with curses on our heads and on the head of Judge Love.

With a kind suggestion that all of the other statements of the Echo might possibly be shown to be equally as trustworthy and in harmony with "the records" as I have shown this to be, I bid it God-speed in its work of "enlightening" the people.

Yours truly, M. J. ROARK.

The deposition of David B. Roll, taken on behalf of complainants, is as follows:

Deposition David B. Roll.

Ques. 1st. State your name, age, residence, and occupation.

Answer. My name is David B. Roll; I am 58 years of age; reside in Muhlenburgh county, Ky., and by occupation am a farmer.

Ques. No. 2. State whether at any time you have been a
352 justice of the peace in commission in Muhlenburgh county, Ky. If you say you have been, state for what years and what district.

Ans. I was elected in 1865 to fill out an -expired term of 2 years for Paradise or No. 4 precinct or district. I was again elected in 1867 and received my commission as a justice of the peace for the same district and served the 4 years out, and was again elected in 1871 and resigned some time in 1872 or 1873. I will not file my commissions herein, as the attorney for the respondents herein waive- the filing of them.

Ques. No. 3. State whether or not you were present at a court of claims commencing November 30th, 1868, and continuing so as to include December 1st of the same year. Please look at the transactions as they are recorded in Order Book 8, commencing on page 326 and running to page 340, inclusive, and state for what purpose the justices were present on that occasion and what duties they attended to; and state whether or not there are more separate and distinct matters shown to have been attended to and dispatched at that term of the court than the matter and things with which the justices of the peace had to deal and did deal at that session
353 of the court; also state whether or not the justices of the peace present at that session of the court had anything to do with or were called on to have anything to do with any matter or thing outside of what by law was devolved upon them, and whether or not they took any notice of or were aware of anything shown by the record outside of the matters properly devolved by law upon the justices of the peace; also state whether or not during the time you were a justice of the peace it was or not customary and usual for the county judge to despatch matters of business exclusively within his jurisdiction by law at those sessions of the court where the justices of the peace were compelled by law to be present while the said justices of the peace were attending to the matters for which they were convened and which by the statute was assigned to them.

Answer. I suppose I was present at the November term, 1868, of the Muhlenburgh court of claims. The justices were there on that day to fix the county levies, pass upon the claims against the county, and to see whether there was any repairs needed on the public buildings, bridges, etc. I see from the order book of that term
354 that we made allowances of various claims and fixed the county levy, and also made an appropriation to pay off the various allowances. I see other matters attended to at that term of the court, such as granting license, appointing guardians, etc., with which the justices had nothing to do. I have not the slightest

recollection that the justices were called upon in regard to any matter except those devolved upon them by law, which matters I have heretofore stated, nor were they made aware of any matters that were transacted by them except those devolved upon them by the laws of the land, as I have heretofore stated. While we were present as a court of claims the judge *sitting* with us, and very often said to us to hold on, that he had to attend to some matter that came under his exclusive jurisdiction. In the mean time we would often go on and discuss the matter under consideration, such as the claims against the county and the county levy.

Question 4. State whether or not — the order entered on 336 page of the records to which your attention has been called and which, omitting the erased words, reads as follows, to wit: "Ordered that S. P. Love be, and he is hereby, appointed to have the bonds
355 of Muhlenburgh county printed for $400,000 in the capital stock of the Elizabethtown and Paducah Railroad Co., in accordance with the order calling election to vote said amount if such bonds be necessary," the erased words reading as follows, viz: "Commissioner on behalf of this county" and "and report to this court," and say whether or not such order or any such matter as contained in such order was acted upon by you in any way or was in any way or manner called to the attention of the justices at that term of the court, and say whether the justices of the peace had anything to do with the passing of such order.

Ans. I know nothing of the order or the passing of it, although I was present then at that term of the court. I know nothing of the order or the matter being called to the attention of any of the justices at that time or any time.

Ques. 5. If any such order had been called to the attention of the justices of the peace in session at that term of the court or if the attention of the justices had been called at that term of the court to such matter, state whether or not it is probable you would have forgotten it.

356 Ans. No, sir: I would not have forgotten it.

Ques. 6. State whether or not you voted in the election held May 30th, 1868, in regard to the subscription of stock to the Elizabethtown and Paducah railroad. If you say you did vote at that election, state how.

Answer. I voted at that election and voted against the subscription.

Ques. 7. State whether or not you have been opposed to said subscription ever since and what your feelings are now.

Ans. I voted against it. I paid my taxes, but told the sheriff I felt like it was pouring money in the fire. I was opposed to the subscription then and have been ever since and am now, but I thought lately that it might be best to compromise, in order to get rid of it somehow. Believing that relief was hopeless, I was willing to make a small compromise.

Ques. 8. Please look at the Record Book No. 8 of the county court, commencing on page 398 and running to 401, inclusive. Were you present at that session of the county court? State whether or not

there is an interlineation of the names of the justices of the
357 peace in said record; also state whether or not there is, from the record, any business transacted at that term of the court which required the action of the justices of the peace and on which they did act, and all you may know about it.

Ans. I was present at the session referred to. I see on the order book that there is an interlineation of the names of the justices of the peace representing us as being present. The justices' attention was called to the sending of a young man, by name Ira B. Bodine, to the college at Lexington. It seems that some other man was spoken of, but I can't remember whom. I remember Bodine because he was highly spoken of and well recommended. I walked in and did not remain there but a short time—did not even take my seat, and don't think the other justices took their seat-. This was the only business we transacted and the only business we were called upon to transact.

Ques. 9. Was there any report made to the justices of the peace on that occasion by Thos. Bruce, the clerk of the court, of any subscription made by him of the capital stock of the Elizabeth-
358 town and Paducah Railroad Company on behalf of Muhlenburgh county? State whether or not there was any matter connected with said railroad or any railroad company & submitted to the justices of the peace on that occasion or to which their attention was called.

Answer. There was no such report made by Bruce while I was present. At that time I was with the justices of the peace while they remained in session. Just as soon as we got through with the appointment of the students to the college we were discharged, being informed by Judge Love that he had no further use for us. No matter connected with the said railroad or any railroad was called to our attention on that day.

Cross-examined by M. C. HAY, for respondents:

No. 1. At what time of the day was it when you were called in to form a part of the Muhlenburgh county court on the 30th day of August, 1869?

Ans. I do not know exactly. It was something near noon, but whether immediately before or after noon I cannot say.

359 No. 2. How many of the justices of the peace of Muhlenburgh county, Kentucky, were present when the county court took action upon the appointment of Ira Bodine as cadet to the Lexington school? And give the names of as many as you remember of such of the justices who were then present and forming a part of the county court on that occasion.

Answer. I remember Joseph Adcock, T. R. Clark, and J. H. Morton. It seems that I remember Esquire J. J. Wood as being present, but of this I am not certain. I do not now remember any more as being here. There might have been one or 2 more here, but I can't say.

No. 3. Is it your recollection that the appointment of Bodine was

made when there was not a majority of the justices of the peace present and forming a part of said county court?

Ans. I can't say, because I don't remember how many were present.

No. 4. Were you present on said 30th day of August, 1869, when David W. Gish and Joseph W. Baker were appointed by said county court as cadets to the Lexington school?

360 Answer. I don't know that I was. I don't recollect of ever being called upon while a magistrate to appoint any one to the college at Lexington except Ira B. Bodine.

No. 4. Now, if the appointment of Ira *D.* Bodine was made in the forenoon and the appointment of Gish and Baker were made in the afternoon, then you were not present when Gish & Baker were appointed, were you?

Answer. I was not.

No. 5. Were you not one of the judges that held said election on the 30th day of May, 1868, when the question was submitted to the voters of Muhlenburgh county on the question as to whether or not the Muhlenburgh county court should, for and on behalf of Muhlenburgh county, subscribe for four thousand shares, $400,000.00, of the capital stock of the Elizabethtown & Paducah Railroad Company?

Answer. I think I was.

No. 6. Were you present and forming a part of the Muhlenburgh county court at a session of said court held on the 1st day of December, 1869, when Thos. Bruce presented an account for $1,150.00 for signing and sealing 2,300 Elizabethtown & Paducah railroad bonds, and were you present and forming a part of said

361 county court when the said county court made an appropriat*ed* of $1,150.00 to pay Thos. Bruce for seals on E. & P. R. R. bonds? And, if you were, tell whether or not a majority of the justices of the peace then present voted for or against making said appropriation, and tell how you voted on said appropriation.

Answer. I was present at the time referred to and think there was a full quorum present. The matter was up for discussion a long time before we acted on it. I don't think we decided it on the first vote. As it failed to carry on the first vote, after the matter had been discussed a long time Mr. M. D. Hay, an attorney for Mr. Bruce, the clerk, made a talk in favor of our allowing the claim and stated that other counties along the line of the railroad had made such allowances, and he thought we ought to do the same, and it was finally allowed by a vote of a majority of the justices, and I myself voted for allowing it, although opposed to it at first.

No. 8. Were you present and forming a part of the Muhlenburgh county court on the 30th day of November, 1868, when appropriations were made by said county court to pay you and the

362 other officers who held said election, held, as before stated, on the 30th day of May, 1868, for their services in holding said elections; and, if so, did you and a majority of the justices of the peace then present take part in making said appropriations?

Answer. I suppose I was there and I remember the appropriations

were made to pay the officers for holding the said election, and together with other justices, took part in making such appropriations.

Further this deponent sayeth not.

DAVID B. ROLL.

The deposition of S. J. Hunt, taken on behalf of complainants, is as follows:

Deposition S. J. Hunt.

Ques. 1st by attorney for complainants. State your name, age, residence, and occupation, and if at any time you were ever a justice of the peace for Muhlenburgh county, and for what district.

Answer. My name is S. J. Hunt; my age is 50 years; reside in Muhlenburgh county, Ky.; I am a farmer by occupation. I served as justice of the peace for 8 years in Muhlenburgh county. I
363 see from the records in the Muhlenburgh county court that I was elected in 1867 and again in 1871, and served until 1875. I was a justice of the peace for district number 5, known as the Meyers precinct.

Ques. 2nd. State whether or not the justices of the peace of Muhlenburgh county were at any time called upon to consider or act with reference to the subscription of stock by the county to the Elizabethtown and Paducah Railroad Company or to consider directly or indirectly any matters with reference to the issue of bonds to the said company of the county, and whether or not at any time the justices of the peace of said county acted at any time with reference to any proposition in regard to the said bonds, either ordering them to be printed or to be issued, or anything of that sort. If you say that the justices of the peace of the said county were ever called upon to consider or act or did consider or act in these premises please state the time when, and what was the proposition brought before them and upon which they acted.

Answer. If the justices of the peace were ever called upon
364 while I was present to act upon the issuing or subscribing of stock or the issuing of bonds or having them printed or with anything in reference thereto until the May term, 1874, I don't remember it. At that term two matters were brought before the justices in reference to said bonds—one, the resolution of J. H. Morton, a justice of the peace, who offered a resolution "Not to recognize bonds of $3,000.00 which was offered to be turned over to the county as cancelled." The purport of the resolution was to ignore these bonds as ever having been properly issued by the county. Upon this the vote was taken, eleven of the justices voting affirmatively for the resolution and one refusing to vote, and S. P. Love, the county judge, voting against. The other matter was a proposition brought before us by S. P. Love, county judge, asking us to make a levy to pay the interest on the bonds of the county, all of the justices voting against this except Love, the county judge, who voted for it. The way we happened to be present at this term of the court was by reason of a summons issued by the county judge convening us

to act upon some matters in regard to the jail and some other
365 matters which had not been acted upon at the last court of claims. The record of the transactions of May term, 1874, is made, so I am informed, as a part of the deposition of W. T. Stiles, heretofore taken, to which I refer.

Ques. 3. If before the May term, 1874, the justices of the peace of the county had been called upon to consider any matter connected with the subscription of stock and issuing of bonds by the county to said company and had acted upon the same while you were present, is it or not likely you would have forgotten it?

Ans. I don't think I would.

Ques. 4. Did you vote at an election directed to be held in Muhlenburgh county in May, the 30th day, 1868, for the subscription of stock to the Elizabethtown and Paducah Railroad Company? If you say you did vote at said election; state how you voted. If you say you voted for said subscription, under what act did you suppose at the time you voted? State whether or not at the time you cast your vote at the election you cast it with any idea that the matter or the subscription to the said railroad was withdrawn by any legislative act from control by the justices of the peace of the said
366 county as in their discretion might appear proper and for the interest of the people of the county.

Answer. I voted at said election and voted for the said subscription of stock. At the time we took the vote I did not know that there was but one act. I had not heard of any amendment by the Legislature or any act subsequent to the first one in regard to this matter. I did not know that any Legislature subsequent to the one incorporating the road or company had passed any other acts or amendmentsd thereto. I supposed I was voting under the first acts, which were passed in 1867. At that time I did not know that the justices of the peace had anything to do with it or ought to have anything to do with it, as it was a new thing.

Ques. 5. Were you then sufficiently familiar with the ideas or sense of the people of your end of the county or with the county generally to say whether or not the people voted with the same lights and under the same impressions as existed in your case?

Answer. I don't know that the people in my neighborhood understood the question at all. They knew that they were
367 voting for a subscription to the railroad, and that is about all they did know about it.

Question. 6. State whether or not there was any knowledge by the people in your neighborhood or anywhere else, so far as you know, of the county that any act had been passed in reference to the subscription to this road at the session of 1867–'8; also state whether or not, considering the geographical extent of the county of Muhlenburgh and the facility for intercommunication among the people of said county, 15 days from the ordering of an election was any sufficient time for the people to be informed in regard to the proposition upon which they were called to vote, and whether or not it was possible in that time to advise themselves of the nature

of the proposition and to act upon it with any intelligent regard to their interest.

This question objected to by attorney for respondents as leading.

W. A. WICKLIFFE,
Examiner, M. C.

Answer. I don't suppose the people had any knowledge of it. The people might have in 15 days' time known that there
368 was going to be election, and that it was for a subscription of stock, but don't think it was sufficient time for them to have considered and understood the proposition upon which they voted.

Question 7. Was there a newspaper published in Muhlenburgh county in 1867 or 1868? State whether or not the acts of the Legislature of 1867–'8 had been distributed in Muhlenburgh county at the time of the holding of the said election.

Answer. I don't remember that there was any newspaper published in the county — 1867 or 1868. I am satisfied the acts of 1867–'8 had not been distributed.

Cross-examined by M. C. HAY, counsel for respondents:

No. 1. Explain, if you can, without looking at either of them, the chief points of difference between the acts of 1867, chartering said Elizabethtown & Paducah Railroad Co., and the act of 1868, amending said charter and under which the said vote was ordered.

Answer. The way I understand the 2 acts is as follows: That under the first act a certain number of persons were author-
369 ized to take individual stock in the said railroad before the county was called on to subscribe. Under the second act the people were simply called upon to vote a subscription. There may be other points of difference, but I don't now remember them, as it has been a good while since I have looked at them.

Ques. No. 2. When did you first learn that the act of 1868, under which said said vote was ordered, had been passed?

Answer. I don't remember.

No. 3. When did you first learn that it was the duty of the county judge to have called upon the justices of the peaces of Muhlenburgh county to act in connection with him in ordering of the said election or levying the tax to pay the interest on the bonds issued or to be issued by Muhlenburgh county in payment of the subscription of stock to said Elizabethtown & Paducah Railroad Company or to act in any manner connected with the said railroad matters.

Answer. I don't remember the exact time. It was some time between the election and voting of the subscription of stock to the company and the time we were called together at May court, 1874.

370 No. 2. Tell, without examining either of said acts, what difference, if any, is there between the said act of 1868 and the acts passed by the Legislature of Ky. in 1867 chartering said railroad & the act amending same, passed at the same session, in respect to the matter as to who was to order the election on the question in re-

gard to the said subscription of stock by Muhlenburgh county to the capital stock of said Elizabethtown & Paducah Railroad Company; also as to the manner by which the consent of the people of Muhlenburgh county to make said subscription was to be ascertained.

Answer. I can't answer this question any further than I have heretofore done in answer to one of your questions.

No. 3. Do you understand now, without examining the act, that the original act passed in 1867, chartering said Elizabethtown & Paducah Railroad *county*, authorized the county of Muhlenburgh *county* to subscribe for stock in the said company, and what understanding about said matter did you have at the time you voted for said subscription in May, 1868?

371 Answer. I understood that the authority to take subscription was given by the Legislature of 1867.

No. 4. Tell, if you can, without reference — the said acts, how many acts were passed by the Legislature of Kentucky in 1867 in regard to the charter of said Elizabethtown & Paducah -road Company.

Answer. I don't remember of any but two; there might have been more, but I don't now remember, as it has been so long and I have not paid any attention to it. I sometimes suffer with neuralgia of the head and it sometimes makes me absent-minded and I can't remember; but what I do remember I remember very plainly.

No. 5. You are not suffering with neuralgia to such an extent as to make you absent-minded to-day, are you?

Answer. I don't know that I am.

No. 6. Did any one, between the time you voted for said subscription and the time said election was ordered, tell you that the vote was to be taken under the acts of 1867? If so, tell who it was.

Answer. I don't know that any one told me.

372 No. 7. Then, if you made a mistake in voting for said subscription, it was because you did not examine the matter fully, was it not?

Answer. I did not understand the matter of voting for said subscription, and I don't think the people had time to examine it properly.

No. 8. Who were the officers who held said election at the Myers precinct, No. 5, of Muhlenburgh county, when the election was held on the 30th day of May, 1868, upon the question of the said county making said subscription?

Answer. I think I was clerk, and think, probably, that Esquire Newman was one of the officers. I can't remember all of them, as it has been a long time. I think the officers were appointed to act by the year, and I can't remember who they *who*.

No. 9. Examine the poll book for said Myers or No. 5 precinct when said election was held on said 30th day of May, 1868, and see if it is not a fact that you were one of the judges that held said election, and that your genuine signature appears on said

373 poll book to the certificate of said poll book as one of the judges and not as clerk.

Answer. I have examined the poll book and see my name is signed as one of the judges of the election, but I did act as clerk in

the place of Samuel Turner, the regularly appointed clerk, who was too nervous to write, but who signed the poll book as clerk.

No. 10. State whether or not you were a member of the court of claims for Muhlenburgh county held on the 1st day of December, 1868, and if you say you were, then tell whether or not you and the other members of said court made appropriations to pay you and the other officers who held said election on the 30th day of May, 1868, for their services in holding said election, & did you not collect the appropriation made by said court for you in holding said election.

Answer. I don't remember that I sat at that court of *the* claims or not. I do remember that I received my pay as an officer of the election of May the 30th, 1868.

No. 11. State whether or not you were present and sitting
374 as part of the levy court or court of claims for Muhlenburgh county held on the 1st day of December, 1869, when said court made an appropriation of eleven hundred & fifty dollars in favor of Thos. Bruce to pay him for signing and putting seals on the bonds issued by Muhlenburgh county in payment of the subscription of the county for stock in said Elizabethtown & Paducah Railroad *County;* and, if you say — were present, then tell whether you voted on making said appropriation, &, if you voted, tell whether you voted for or against said appropriation.

Answer. I was present and voted for the allowance to the clerk, Mr. Bruce, as above stated. I will state that when it was first proposed the justices seemed to be at a loss and somewhat opposed to it, but Mr. M. D. Hay, a lawyer, made a speech to them on behalf of Mr. Bruce; then Mr. Pittman, the county attorney and the legal advisor of the officers of the county, made a speech to the justices, telling them that they would have to pay the clerk something, as the law allowed him something for his services, and if we did not
allow it that Bruce could by law compell us to make the
375 allowance. After this we then talked about it and thought the claim was too large, but thought best after Pittman's speech to make the allowance, and I think a majority voted for it or it would not have carried.

Re-examined by attorney for complainants:

Ques. 1st. You have stated in your examination-in-chief that there was no newspaper published in Muhlenburgh county during the years 1867 and 1868. You likewise have stated that the acts of 1867–'8 had not been distributed to the officers of Muhlenburgh county. In cross-examination you have been asked in substance whether want of knowledge in the people of the county of the passage of the acts of 1867–'8 was not the result of the want of investigation. Now, suppose you had desired or the people of the county had desired to make an investigation of this matter, what was there in Muhlenburgh county to inform them, first, that any such act had passed of 1867–'8; second, of its nature and character? Suppose, further, that the people of the county had sent any one to Frankfort,

the capital of the State, to examine whatever sources of infor-
376 mation there might be there as to this act, was it or not physically possible within the 15 days in which the election was to be held for the information to have been gotten for the people of the county to be advised and fully informed as to the same, so that they might conclude intelligently as to their interest?

Answer. There was nothing in the county to inform us that the act had passed or of its nature and character. I don't think they would have had time to investigate it. I don't think it could have been physically possible for the people to have gotten a copy of the act from Frankfort and have investigated it sufficiently within the 15 days of time and come to an intelligent conclusion. I don't remember of ever seeing any of the posted notices of the election, and so I can't say from what act the election was held, so far as notices would indicate. The journals of the house, now shown me, show that by joint resolution the Legislature of Ky. adjourned on the 10th day of March, 1868, viz., the session of 1867–'8, until the 5th day of January, A. D. 1869.

It is agreed by counsel that this statement here waives the
377 necessity of producing the journals as evidence in this case, and it is further agreed by counsel that the acts of the session terminating the 10th day of March, 1868, were published in *a* separate volumes, and that the acts of the adjourned session, commencing 5th day of January, 1869, were also published in separate and distinct volumes.

Recross-examined by M. C. HAY, counsel for respondents:

No. 1. State whether or not F. M. Allison was the member of the senate from the district of which Muhlenburgh county formed a part in the Legislature of Kentucky for the years 1867 & 1868, & if you should say he was, then tell where he resided from May 15, 1868, to May the 30th, 1868. Tell also who was the member of the Legislature for the year 1867 & 1868 from Muhlenburgh county, Kentucky, and tell where he resided during the month of May, 1868, and state whether M. D. Hay was the member for said year.

Answer. I don't remember who was in the senate or in the Legislature during the time inquired of.

Further this deponent sayeth not.

S. J. HUNT.

378 The deposition of Jno. Edmund Rhoads, taken on behalf of the complainants, is as follows, to wit:

Deposition of Jno. Edmund Rhoads.

Question 1 by attorney for complainants. State your name, age, residence, and occupation.

Answer. Jno. Edmund Rhoads. My age is 38 years; reside in Muhlenburgh county, Ky.; am a farmer.

Question No. 2. How long have you lived in Muhlenburgh county and are you or not familiarly acquainted with the citizens of said county in every civil district thereof—in other words, are you not generally known to and do you or not generally know the people of said county?

Answer. I was born and raised in Muhlenburgh county and lived here all my life. I am well acquainted with the greater portion of the people of the county in all the districts thereof and I suppose they know me very well.

Question 3. State whether or not you are informed as to the existence of a certain act of the Legislature of the State of Kentucky, generally called the "funding act," purporting to be passed
379 by the said Legislature with the view of funding the bonds of said county purporting to have been issued to the Elizabethtown and Paducah Railroad Company.

Answer. I am informed of the said act.

Question 4. State whether or not it was rumored that the citizens of said county petitioned for the passage of said act. If you say it was so rumored, state whether or not you have at any time made any effort or inquiry to discover what citizens of said county had signed such petition, if any. If you say you made such inquiry, state how or — what manner and the extent of the inquiry. Show fully the effort you made to ascertain the names of signers. State whether you prosecuted this inquiry with diligence or not, and whether or not you left any effort untried by which to ascertain the names of citizens who signed such petition, and state the results of this inquiry and these efforts.

This question objected to by attorney for respondents because of incompetency and irrelevancy.

W. A. WICKLIFFE,
Examiner M. C.

Answer. It was rumored that the majority of the citizens
380 of Muhlenburgh county had petitioned for the passage of said act. Last December I commenced making a canvass and canvassed the whole county in person, except the 2 precincts of Boggess and Court-House, which I am informed are districts Nos. 2 & 3, and found no one that had ever signed any such petition to the Legislature. Finding my progress rather slow in the upper part of the county, I had a notice — in the Central City Argus, a newspaper published and printed at Central City, Muhlenburgh Co., some time in March, asking that any one who had signed such petition to let me know at Bremen, Ky., but I never heard from any one. I also wrote to R. Y. Thomas, Jr., who was then in Frankfort and was there attending the Legislature as the representative from this county, to send me the names of the petitioners, but he wrote back to me that the petition could not be found in Frankfort. I did all that I thought necessary to do to find out the names of these petitioners, but failed in finding any one. I don't now think that I could have done more than already done by me.

Question 5. State whether or not the circulation of the
381 Argus, in which you published your notice and request, is general. State whether or not the Boggess & Court-House precincts embrace Greenville, the county-seat of Muhlenburgh county.

Answer. I suppose the circulation of the Argus is general. The two precincts embrace Greenville, the county-seat.

Cross-examined by attorney for respondents:

No. 1. State in what justice's district do you reside. State whether or not you are one of the plaintiffs in this action. State whether or not you are a member of the so-called Independent Order of Tax-Payers.

Answer. I reside in South Carrollton precinct, or No. 1 district. I am one of the plaintiffs in this action and I am one of the members of the Independent Order of Tax-Payers.

No. 2. You have stated that in trying to ascertain who signed the petition to have the act of the Legislature known as the funding board passed that you canvassed personally all the districts of Muhlenburgh county, Kentucky, except the Boggess district & the Court-House district, which are districts No-. 2 & 3. Now, why was
382 it that you did not canvass these two districts?

Answer. I did not have the time to canvass them in person and go ahead with my farm work.

No. 3. How many days did you spend in canvassing the other districts named?

Answer. I don't know that I can give the exact number of days. I will say 50 or 60 days; maybe more or maybe less.

No. 4. Do you know one Wm. Short, generally known as "Log Creek Wm.;" and, if so, in what civil or justice's districts does he reside and how often have — seen him since last December?

Answer. I am personally acquainted with said Wm. Short and he lives in South Carrollton precinct. I have seen him frequently since last December.

No. 5. Did you ever ask him whether or not he had signed said petition? If so, what did he say?

Answer. I don't remember of asking Mr. Short anything in person about the matter. I have named it to persons in his presence, but he never said anything to me about it.

No. 6. Did you know one Thomas C. Summers? If so, in
383 what district did he reside up to February, 1886; and, if so, did you ever ask him whether he signed said petition or not? If so, tell when it was and who was present and what he said about it.

Answer. I knew T. C. Summers, who lived in Summers or No. 6 precinct. I never asked him anything about it from the fact that from the time I was appointed to attend to this business he was confined to his bed or house up to the time he died, and I never met with him during this time.

No. 7. Do you know Wm. Jago, W. K. Morgan, S. W. Earle, C.

W. A. Armstrong? And, if so, tell in what civil district they reside and tell whether you ever asked either of them whether they had signed said petition; if so, tell where & when you asked them & what each of them said.

Answer. I know the parties inquired of; they all live in Summers or No. 6 precinct. I never asked them direct in person. I will state that I was present at the sale of T. C. Summers and in conversation with some parties about this matter. Mr. W. K. Morgan and Wm. Armstrong were present. I stated my business
384 to the whole party and asked this question: "Gentlemen, did any of you sign or do you know of any one who signed the petition to the Legislature of '78 to pass the funding bill?" and no one responded that they either signed it or knew of any one who signed it. The sale was very largely attended. I never said anything to Wm. Jago or Sam. Earle about this matter.

No. 8. Do you know Thomas Baxter, Jesse Moore, Wm. Young, G. V. Glenn, O. C. Vanlandingham, J. C. Haden, G. W. Haden; and if so, in what district do they reside? And tell whether you ever asked either of them whether they signed said petition or not; and, if so, what did they say?

Answer. I know all the parties; they live in Central City and Paradise precinct. I never asked any of them in person except O. C. Vanlandingham, who said he had never signed a petition to the Legislature for a funding bill, but had petitioned the Legislature against a force bill. I canvassed Central City precinct and met Jesse Moore frequently and he knew what I wanted, but never said anything to me about it. I will state that my imformation
385 was that these petitions were gotten up in mass meetings at South Carrollton, Central City, Paradise, and other places in the county, and so when I met a crowd I asked the whole crowd about these petitions, because I thought they would know of some one who had signed it or something about it. It is highly improbable that any of these men asked about did not know my business, and they had opportunities of imparting their information to me, but I never received any news from them about this matter. I have no doubt that any one of these parties would likely have known if any of these petitions had been gotten up in their immediate neighborhoods. I know that there was no petition circulated in my neighborhood. I saw none and heard of nene.

No. 9. Is it not a fact that you were appointed by the so-called Independent *of* Order of Tax-Payers to make these investigations for the sole purpose of gathering up testimony in this case?

Answer. I was appointed by the order, but I did not know that it was to be used as evidence in this case.

No. 10. Did you know for what purpose they wanted this information?

386 Ans. It was claimed that a majority of the tax-payers of this county had signed these petitions. We, of the Independent Order of Tax-Payers, claimed that they were not a majority and wished to find out for our own satisfaction, and for this reason I was appointed.

No. 11. Please examine the certificate of the poll books for the August election, 1886, and tell how many of the votes cast at said election were taken in the districts No-. 2 & 3; how many in the whole county of Muhlenburgh at said election; and file herewith and make a part of this deposition a copy of said certificate..

Answer. I have examined the poll books and the corrected lists as corrected by the board of examiners, and find that as between the candidates for circuit judge there were cast at the said election in precincts No-. 2 & 3, 1,281 votes, and in the whole county 3,179 votes, and I file herewith and make part hereof a certified copy of certificate of board of examiners showing this fact, said copy marked "J. E. R."

Re-examined by attorney for complainants:

387 Question 1. You speak of meeting parties at Summers' sale. Was this the Summers referred to in the cross-examination of defendants' counsel, and was the sale you speak of the sale of his estate? Did you ever see the Wm. Jagoe as mentioned by counsel in interrogatory of cross-examination No. 7? Did he know you were seeking the information inquired about by the counsel for defendants? Have you any reason to suppose the said S. W. Earle mentioned in the said cross-interrogatory knew of the information you desired? If so, state why you suppose so; also further look over the names of parties of whom you have been asked in cross-examination, and state whether or not they are bondholders, meaning by that are the- holders of bonds of Muhlenburgh county to the Elizabethtown and Paducah railroad.

Answer. It was the same Summers referred to, and the sale I speak of was the sale of his estate. I saw Mr. Jagoe, as I have stated. I saw other parties, and he knew my business and that I wanted this information, but never said anything directly to him about it, but did mention it once in his presence at Bremen. I can't say
388 anything about what S. W. Earle knew, as I had not met him during the canvass. I don't know whether Wm. Short is a bondholder or not; he claimed not to be one. T. C. Summers claimed to be a bondholder. Wm. Jagoe is a bondholder. I don't know anything about whether or not W. K. Morgan, S. W. Earle, W. A. Armstrong, Thomas Baxter, Wm. Young, G. V. Glenn, O. C. Vanlandingham, J. C. Haden, & G. W. Haden are bondholders. I know that Jesse Moore is a bondholder. I have heard that Thomas Baxter, O. C. Vanlandingham, G. W. Hayden, J. C. Hayden, and G. V. Glenn are bondholders, and also Wm. Young.

Recross-examined by attorney for respondents:

Question 1. State who said anything to you about Thomas Baxter, O. C. Vanlandingham, G. W. Haden, J. C. Haden, G. V. Glenn, and Wm. Young being bondholders.

Answer. I can name no one who spoke of them as a whole as bondholders, but it was generally a received opinion in the community that they were bondholders. Capt. Ward informed

me that G. V. Glenn was a bondholder. I think that
389 Louis Jones told me that G. W. Hayden was a bondholder.

2. What is Capt. Ward's full name? Do you mean Capt. Wm. F. Ward, who lives in the south part of the county; &, if so, when & where did he tell you that G. V. Glenn was a bondholder? Tell who was present when the conversation occurred between you.

Answer. It is the same Capt. W. F. Ward who lives in the south end of the county. The conversation occurred in his house, and some time in March, 1885. L. J. Stearsman and Thomas Kimmel were present at the time.

3. Did you vote at the election held on the 30th day of May, 1868, when the proposition was submitted to the voters of Muhlenburgh county as to whether or not the Muhlenburgh county court should subscribe for and on behalf of said Muhlenburgh county for 4,000 shares, four hundred thousand dollars, of the capital stock of the Elizabethtown & Paducah Railroad Co.? Give your recollection about that.

Answer. My recollection is that I did vote at said election, and voted against the subscription. I have examined the poll book and find I did not vote at all.

390 4. When were you born?

Answer. I was born the 21st day of March, 1848.

Further this deponent sayeth not.

J. E. RHOADES.

The exhibits above referred to, marked "J. E. R.," is as follows:

EXHIBITS J. E. R.

COMMONWEALTH OF KENTUCKY, }
County of Muhlenburgh }

We, the presiding judge, clerk of the county court, and sheriff, duly authorized to compare the vote for the county of Muhlenburgh, do certify that at an election held in said county on Monday, the 2nd day of August, 1886, for the office of circuit judge for the second judicial district, at the several places provided by law for holding elections in said county, upon due comparison and addition the vote stood thus:

For John R. Grace, 1,654 votes; for Clifton J. Pratt, 1,525 votes.

Given under our hands this 5th day of August, 1886.

J. H. MORTON,
Presiding Judge M. C. C.
ALEX. TRUSLEY, *Sheriff.*
W. T. STILES,
County Court Clerk.

391 STATE OF KENTUCKY, }
County of Muhlenburgh, } *sct:*

By the report of the board of examiners it appears at the August

election, 1886, the number of votes cast for the candidates for circuit judge in district No. 2, or Boggess, was 580, and in the Court-House precinct, or district No. 3, there was cast at said election for said candidates 700 votes.

Attest: W. T. STILES, *Clerk.*

The deposition of Jacob M. Vick, taken in behalf of complainants, is as follows:

Deposition of Jacob M. Vick.

Question 1. State your name, age, residence, and occupation.

Answer. My name is Jacob M. Vick; I am 74 years of age; reside in Muhlenburgh county, and am a farmer.

Question No. 2. State whether or not you were ever at any time one of the justices of the peace for Muhlenburgh county, Ky. If you say you were, state for what district; also how long you were one of such justices of the peace for such county.

Answer. I was elected and commissioned a justice of the peace for civil district No. 2 in 1871, and was again re-elected and
392 commissioned in 1875. I do not produce my commissions, as the counsel of the defendants waives production of them. I was elected the 3rd time 1875, but did not qualify.

Ques. No. 3. State whether or not during the time you served as one of the justices of the peace of Muhlenburgh county *then* in any way, directly or indirectly, recognized the validity of the bonds purported to be issued to the Elizabethtown & Paducah railroad *road* or to the *the* Elizabethtown & Paducah Railroad Company. Was any proposition ever made by the county judge of the said county, S. P. Love, to the justices of the peace to make a levy for and on behalf of said bonds? If you say this occurred, give the circumstances and what was done, &c.

Answer. While we were in session as a court the justices never, directly or indirectly, recognized the validity of the bonds. In 1874, at the May term thereof, Col. S. P. Love, who was then county judge, asked us to make a levy for these bonds. Either Love or some one of the court had said that the bondholders were not satisfied with the authority of the county judge to make a levy. I think it was Love who told us this. I told him he had made it for
393 5 years, and that so far as I was concerned he could still go ahead and make it; that I would have nothing to do with it. I think this was a called term.

Further this deponent sayeth not.

his
JACOB x M. VICK.
mark.

The deposition of Louis Jones, taken on behalf of complainants is as follows:

Deposition of Louis Jones.

Question No. 1 by attorney for complainants. State your name, age, residence, and occupation.

Answer. My name is Louis Jones; I am 53 years of age; reside in Muhlenburgh county, Ky., and by occupation am a farmer.

Question No. 2. State whether you at any time were a justice of the peace in commission in Muhlenburgh county. If you say that you have been such justice of the peace state when you became such and for what length of time you continued in office, and for what civil district in said county you were elected.

Answer. I was elected and commissioned a justice of the peace for civil district No. 5, known as Meyers precinct, in Muhlen-
394 burgh county, in about August, 1871; served up to 1875, when I was again re-elected and commissioned, and served up to the early part of 1876, when I resigned. I was again re-elected in August, 1876, but did not qualify. I do not file my commission herein, as the attorney for the respondents waived the production of them.

Question No. 3. After your election as a justice of the peace for the county of Muhlenburgh did you ever have any application made to you and the justices of the peace of Muhlenburgh county, sitting with the county judge as a county court, to take any action with regard to certain bonds of the said county purporting to have been issued to the Elizabethtown and Paducah Railroad Company in payment of certain stock purporting to have been subscribed by the said county to the said corporation? If you say that such application was made to you and the other justices of the peace of said county convened in session with the judge of the county court of the said county, please give a full history of that event as minutely and in detail as you can.

Answer. I think that we were summoned by the county judge
395 to appear here in Greenville at the May court, 1874, to make a levy to pay the interest on the said bonds subscribed to the Elizabethtown & Paducah railroad. I was present at the said term, and while we were in session as a court the county judge, S. P. Love, proposed to levy to meet the interest on said bonds. The vote was taken on the motion and decided in the negative. The county judge stated upon the convening of the court that he had called the justices of the peace together to take some action upon making this levy, as well as to attend to some other matters of the county. Mr. F. B. Hancock, claiming to be a sinking-fund commissioner of the county, produced in court bonds which he and the county judge said amounted to $3,000.00, that had been bought in by Mr. Hancock, so he stated to the court. Was asked by the county judge as to what disposition should be made of these bonds. The justices refused to recognize these $3,000.00 worth of bonds as bonds of the county in any manner whatever. I think that J. H. Morton, one of the then justices of the peace, offered a resolution, which was carried, against the recognition of these $3,000.00 worth of bonds.

396 Question No. 4. State what Judge S. P. Love, then county judge, said in connection with the proposition made by him to you to make a levy to pay the interest on said bonds. If he said anything or if the justices said anything on that occasion in regard to this particular matter, please give, as nearly as you can, *pro* and *con.*, what was said on that occasion, so far as you remember, by either the county judge or any of the justices.

Answer. My recollection is that the county judge, S. P. Love, stated that he had always been under the impression and had acted under the impression that the power to make the levy was vested in him, but that since the adoption of the general statutes of 1873 he doubted his right to make the levy, and that he thought it best to call the justices together to make the levy or take some action in regard to the matter. I don't remember that the county judge said anything to us about the bondholders had requested him to call us together to make this levy, but it was rumored that an agent of the bondholders had been here and asked Love to call us together to
397 make a levy, and it was also rumored that *that* this agent had gone to all the counties along the line of road to get the justices to take some action in making the levies wherever a subscription had been made to the said road, and this was generally reported, and heard no denial of it.

(This part of the answer in regard to this rumour is objected to by attorney for respondents.

W. A. WICKLIFFE, *Examiner.*)

There were a great many words spoken by the county judge and the justices on this occasion and there seemed to be some hard feelings between some of the justices on the one part and Love and Mr. Hancock on the other part. Love said he would never go back on what he had done in regard to making the levy for these bonds or on anything that he had done in connection with it; told the justices that if they refused to make this levy a mandamus would be issued compelling them to make it as soon as the intelligence of their refusal should reach Louisville. He made this statement under some excitement, I thought, and, I thought, manifested some bad temper at our refusal to make this levy and uttered this
398 statement in a threatening manner. Several of the justices made speeches, stating in substance that they had never *had* taken any action in regard to the issuing of the bonds or making any levy to pay the interest, and that now they did not intend doing so.

Question No. 5. State how long this discussion about making the levy on the said bonds consumed, including the time taken up by the justices and the county judge, and also who took up the longest time, the county judge or the justices.

Answer. I think the court was in session some 2 or 3 hours, and the justices and the county judge consumed most of this time in discussion of this matter. Nearly all the justices, 12 in number, made speeches, and, consequently, consumed most of the time. The county judge spoke at least as long as 30 minutes.

Question No. 6. May or not many things have been said which you cannot now recal-?

Answer. I do not pretend to quote the whole of what was said. I cannot recall all that was said. I only give such parts as I remember of what was said.

Question 7. Do you remember the name of the agent of
399 the bondholders who was reported to have made the application to the county judge to have the levy made to pay the interest on these bonds by the justices?

Answer. I do not know the name nor do I know that I ever heard the name.

Question 8. You have stated that you became a member of the county court of Muhlenburgh county as a justice of the peace in August, 1871. State whether or not you are familiar, during the time you were a justice of the peace, with the habits of S. P. Love, the county judge, in administering the court when the justices were convened to act upon anything supposed to be in their jurisdiction. If you say that you did become familiar with his habits in the regard which I have just mentioned, please state whether or not S. P. Love was in the habit of attending to matters in his exclusive jurisdiction and with which the justices had nothing to do in the same room where the latter were convened with him and while they were acting on matters that appertained to their office and about which they were convened.

Answer. I think I became familiar with his habit of ad-
400 ministering his court while we were in session with him. I have seen him attend to business of his own exclusive jurisdiction while we were in session and attending to business of the jurisdiction of the justices and about which we were convened. This was in the same room in which we sat. My general recollection is that while we were present and in session with him he never hesitated at any time to attend to business which was brought before him and of his exclusive jurisdiction. I have seen other county judges in this county do the same.

Question 9. After you were elected and commissioned a justice of the peace and before you were convened at the May term, 1874, of the county court, state whether you ever made any mention to the county judge, S. P. Love, about calling the justices together in regard to these bonds. If you say you did have a conversation with him as to these bonds, state, as near as you can, when it was and what passed between you on that occasion in regard thereto.

Answer. I think that it was at the November term of 1872 and
1873 I spoke to Judge Love concerning the lev-ing of the tax,
401 and on both occasions the county judge stated to me that he regarded this as his special duty and business especially conferred upon him, to make this levy. What brought this out of him was that I had asked him if he was not going to get the justices to make the levy to meet the interest and pay the bonds of the county to the railroad. My object in asking this question was that an application might be made to the justices to make the levy, and in order that if

it was made we might put ourselves on record against the legality of the bonds as an obligation of the county of Muhlenburgh.

Question 10. Do you know anything about an election purporting to have been held under an order of S. P. Love, county judge, in Muhlenburgh county, for subscription of $400,000.00 of stock in the Elizabethtown and Paducah Railroad Company? If you say you do, state what was your position in regard to the said subscription. State also whether or not the people of said county knew anything about the act of 1868, passed at the session of 1867–'8, or whether or not they had any opportunity of knowing the said act. Likewise please state if there was anything practically ac-
402 cessible to the people of Muhlenburgh county by which they could know that they were voting for a subscription of stock under any other than the act approved March the 9th, 1867, entitled An act to amend an act incorporating the Elizabethtown & Paducah Railroad Co.

Answer. I think I know something about said election. I voted for the subscription and was under the impression that for every dollar we voted for the subscription we should have individual stock to the amount of taxes paid, however small the amount, and I also understood that this stock would be above par, and that the railroad company would declare a dividend to every individual stockholder. These impressions were made by men who made speeches on behalf and were in the interest of the rail-road. I know M. Thomas, the president of the company, was the first man I heard make speeches and these representations; this was at Greenville, the county-seat. I remember also particularly he said to us, "Gentleman, for every dollar paid in taxes for this road each individual tax-payer will get certificate of stock, which would be above par and upon which dividends would be annually declared
403 as soon as the rolling stock was on the road, or within a short time, and, gentleman, within 2 years after you put the bonds within the hands of the company I will have the iron horse running — this county." I quote this from memory, and as near as I can recollect these were his words. My recollection is that this speech was made at the court-house yard. I was opposed to the railroad subscription until I heard Thomas' speech. A large crowd was present—people from all sections of the country. It was a short time before the election; about 15 days, I think. Persons in the interest of the railroad went out over the whole county making the same representations and promises. The act of 1867 was at the time of the election in possession of all the justices and county officers of the county, but I had never seen the act of 1867–'8 before the time of the election, and I don't suppose there was a copy of it in the county. I have been a member of the Legislature several times myself and know about and am familiar with the distribution of the acts of the Legislature. A pamphlet edition of the general acts of the Legislature are distributed to officers of the county
404 some time in the June succeeding the adjourning of the Legislature at which these acts are passed, but these general acts do not contain the private acts, such as railroad charters & the

amendments thereof. These acts concerning railroad charters and amendments thereof are not distributed until included in bound volumes and are not distributed to the various counties until October or November succeeding the adjournment of the Legislature; therefore, unless the acts of the session of 1867–'8 was made an exception to this general practice, the act of that session concerning the Elizabethtown & Paducah railroad could not have been in Muhlenburgh county before the election unless some individual had in some way obtained a copy of this special act separate and distinct from the other acts from the public printer. I never heard of any such copy of the act or any other copy of the act was in the county before said election, and I have heard it remarked that there was no copy of that act in the county before the election, and in speaking for myself I can say I do not know of the existence of any such act before the election, and from all these facts & in view of the
405 extent of the county, the population thereof, the poor means of intercommunication, I don't believe it could have been physically possible for the citizens of the county to have known of or understood that they were voting under the act of 1867–'8, and the act of March the 9th, 1867, was the only act which at that time they had an opportunity of knowing.

Question 11. Was there any newspaper published in 1867 or 1868 in the county of Muhlenburgh?

Answer. I don't think there was, nor was there any railroad.

Question 12. Please look at the assessor's books to refresh your memory, and with the aid of those books and from your memory state what was the number of the votes in this county in 1867 and 1868 or either of them.

Answer. I think there must have been some 2,800 or 3,000 voters in the county at the time spoken of.

Question 13. State if ever you were a member of the Legislature from Muhlenburgh county. If you say you were, state when first elected and how often you were elected to serve as a member in the General Assembly of Ky. from Muhlenberg Co.

406 Answer. I was first elected to the Legislature in 1877, re-elected in 1879, again in 1881, and again in 1883.

Question 14. What other offices have you held in and for Muhlenburgh county?

Answer. None except as a justice of the peace.

Question 15. How long have you been a resident of Muhlenburgh county?

Answer. I was born and raised here.

Question 16. Had your life and business been such as to bring you in contact with the people of Muhlenburgh county before 1867 and 1868; and, if this was the case, were you in 1867 & 1868 familiar with the people of Muhlenburgh county generally, and was your acquaintance coextensive with the boundaries of the county?

Answer. I knew the people from all over the county, but I can't state that I know the people of the county generally.

Question 17. If you had known that the subscription proposed and upon which you voted was under the act of 1868 and had

known that act to be such as you subsequently to the election found it out to be, state whether or not you would have voted for the subscription of stock under the act of 1868.

407 Answer. I would not, and am confident that very few others would have voted for the subscription had they known of this act. My confidence is based upon the familiar knowledge of and *vieus* influencing those who voted for it.

Question 18. State whether or not you would have voted for the tax, even under the act of 1867, if the president of the Elizabethtown & Paducah Railroad Co. had not made the pledges and representations which he did in a speech to which you have referred at the court-house in Greenville.

Answer. I would not.

Question 19. State whether or not, from your knowledge of the sentiments of those who did vote for the subscription of stock, these pledges and representations had as potential an influence on them as on you.

Answer. I don't believe that any respectable number of votes would have been cast for it had they known that the thing would have turned — as grand a swindle as it did. The reason I call it a swindle is because all the pledges they made to us about the stock, etc., turned out to be false.

408 Question 20. Were any dividends ever paid on the stock, either to individual tax-payers or to the county, and what became of the railroad and of the original company to which the county made the subscription?

Answer. None. My understanding is that the road immediately after its completion passed into the hands of a receiver and the old company and the road was sold out by a decree of a bankrupt court, lock, stock, and barrel, and I understand, though I do not know, that some of the original stockholders and projectors of the road became the purchasers thereof, thereby fleecing the counties along the line of the road who had subscribed stock for the road—every county who had subscribed stock to the road thus loosing what they had subscribed by the action or the road & company. I think this sale was in 1872 or 1873. It was decreed to be sold by the bankrupt or United States court.

This answer objected to by attorney for respondents.

W. A. WICKLIFFE, *Examiner*.

409 Question 21. State whether or not you are familiar with an act of the Legislature relating to the bonded indebtedness of the county, generally supposed to have passed with special reference to the bonds of Muhlenburgh county issued to the Elizabethtown and Paducah Railroad Company. If you say that you are familiar with such an act, please give a history of that piece of legislation so far as you know, the said act being generally known as the "funding act."

Answer. I was in the Legislature at the time the bill asked about was passed, and am therefore somewhat familiar with the said bill. Said bill was entitled "An act authorizing the county of Muhlenburgh

to compromise its outstanding bonded indebtedness,," etc. and was passed at the session of 1878.

During the session of the Legislature of 1878 the holders of the Muhlenburgh county bonds issued to the Elizabethtown & Paducah Railroad Co. made several efforts to get bills passed authorizing and compelling the county judge alone to levy taxes for the railroad bonds. By these railroad bonds I mean bonds issued in payment of stock to the Elizabethtown & Paducah Railroad Co. These
410 bills were introduced in the house and senate both at the same time and referred to committees of each body.

This was a general movement to compell all counties that had issued bonds to railroad companies—to compel them to make a levy. The bill further provided that where there were no justices in the county, or where, for some reasons, the justices did not meet with the county judge at a court of claims, the county judge was authorized then to make a levy to pay off the interest and bonds issued to railroads, and also for other taxes.

These bills were written by Clint. McClarty and in his own handwriting, who was then in the employment of Norton's Bank of Louisville, & who remained at Frankfort for weeks in the interest of the bills. The bills were further advocated by the attorneys of the banks of Louisville holding bonds issued to railroad companies. The bank or banks of Lebanon, Ky., holding the bonds of Muhlenburgh county also had attorneys there advocating the passage of these bills.

During the pendency of these bills before these committees Mr. Feland, a member of the house from Christian county, received from the banks of Hopkinsville, Ky., also from holders of
411 bonds residing there, petitions favoring the passage of these general bills above referred to. The petitions were, so far as I recollect, severe statements on Muhlenburgh county which at the time I thought incorrect. The purport of the petitions, so far as I can recollect, was that the people of Muhlenburgh were dishonest, had acted in bad faith, and refused to pay their honest —, and stated the county of Muhlenburgh generally had been made rich by the railroads. This was not true in fact. Upon these bills being referred to the proper committees of each respective house, I, as a member of this county (Muhlenburgh), wrote to J. C. Thompson, who was then county judge, for a remonstrance against those Christian county petitions. The remonstrance was not sent, but Messrs. County Judge J. C. Thompson, Charles Eaves, W. L. Dulaney, B. J. Shaver, Eugene Eaves, Ex-County Judge S. P. Love came to Frankfort from this county for the purpose of compromising the debt. I refused at that time to let a compromise measure pass, though Judge Chas. Eaves drew 2 different bills, both of which were submitted to me for my approval,
412 but which I rejected. My recollection is that at this time Judge Chas. Eaves spoke to Hon. C. G. Allen, who was then a member of the Legislature from Caldwell county, to put in the leave for the bills written out by him to be introduced after I had declined to do so. These gentlemen that had come up from Muh-

lenburgh county to see me & then went back home, except Judge Eaves & Judge Love, who remained several days longer. While these gentlemen were in Frankfort, Judges Eaves and Thompson went before the judiciary committee of the house and made speeches to the committee advocating the compromise of the Muhlenburgh county railroad bonded indebtedness. I was present at the time, but said nothing. Several days after Judges Eaves and Love had returned home there were petitions sent to the Legislature in the handwriting of Judge Eaves asking that the compromise bill drawn by Eaves, and which I had refused to introduce or let pass, be passed. Amongst the names of the petitioners were some I recognized as the names of parties who were bondholders—so I am informed—such as Geo. Parks, B. J. Shaver, and several others I had heard mentioned as bondholders.
413 There were some 2 or 3 petitions, all in the handwriting of Judge Eaves. I considered myself as legally bound then to refer these petitions to the committee having in charge these bills. After these petitions for Judge Eaves' bill and the bill itself had come to Frankfort I amended the bill in several particulars before referring it to the committee, two of which amendments I now recollect. The first was the striking out the provision in the bill of allowing a poll tax to pay part of said railroad tax; the second was the striking out of that part of the bill which gave the county judge alone the power to appoint the commissioners to make the compromise and inserting in lieu thereof a provision submitting the choice of the commissioners to the voice of the people of the county, or rather to the qualified voters of the respective districts of the county. This bill, as amended by me, was passed by both houses of the General Assembly. While the force bills of the banks of the Louisville and this bill were pending before the committees and house Mr. Feland, who had advocated the force bills, moved an amendment before the judiciary committee of the house, in which
414 amendment provision was made that in case the commissioners of Muhlenburgh county did not make a compromise of Muhlenburgh county bonds in six months, then the holders of said bonds might look to the county judge and compel him to levy a tax to pay the interest on the bonds then due or to fall due and to create a sinking fund for the purpose of paying off the said bonds when they became due. Said amendment was voted on by the judiciary committee and was carried by them or before them. This amendment was made to the Eaves or compromise bill, but subsequently I prevailed on Mr. Feland to withhold this amendment of his and he complied, and, withdrawing his amendment, the bill as amended by me was then reported to the house, when it passed. Mr. Feland was known as the attorney for the bondholders. At the next session of the Legislature, while on my way to Frankfort, I was requested by Mr. M. C. Hay to stop and see Mr. Jno. W. & D. S. Green in Louisville, telling me where they lived and that they were agents for the county to fund its debt.
I did call to see them and had a talk with them about
415 this matter. It appeared to me that they were trying

to get every dollar they could in the way of a compromise; talked high compromise all the time. At this the second session of the Legislature, while I was a member—I think it was the second session, anyhow it was immediately after seeing the Messrs. Jno. W. & D. S. Green in Louisville—other force bills were introduced in the Legislature seeking to compel the county judge alone to make a levy to pay those bonds and the interest thereon at maturity, dollar for dollar. Amongst the men and bondholders there advocating the passage of these force bills were the said Messrs. Jno. W. & D. S. Green, who were there in person before the committee. At this session of the Legislature I again amended the compromise bill of Judge Eaves, as passed at the preceding session, in which amendment provision was made that when real estate should be sold in Muhlenburgh county for the non-payment of taxes arising from the compromise bonds 5 years' time was given in which to redeem, the bill as originally passed having altogether failed to make any provision for redemption of lands sold for these taxes.

416 During my 8 years service as a member of the Legislature there were introduced in the Legislature 11 bills in all seeking to compell the county judge alone to make a levy to pay the interest and bonds of counties issued to the railroads of the State. These were known as force bills.

Question 22. You stated that the petitions sent from Muhlenburgh county asking the Legislature to legislate upon the bonded indebtedness of Muhlenburgh county also requesting the Legislature to pass or adopt the bill accompanying the petition. Was this bill the one grafted by Judge Eaves and which you amended before referring it and the petitions to the judiciary committee?

Answer. It was the same bill.

Question 23. State why you amended said bill, as grafted by Judge Eaves, before sending it on to the proper committee.

Answer. I was the representative from Muhlenburgh county and conceived that I had a right to look over the local bills of the county and regarded this particular bill as defective in several parts, which I amended. The general tenor of the bill provided that the holders of the bonds should have a lien on all the property in the

417 county. Provided further, that the county judge had the power to appoint the commissioners to fund the bonded indebtedness; gave the county judge alone the right to levy the tax to pay the interest and the bonds at maturity, and in case of his refusal it made it the duty of the circuit judge to make the levy to pay the interest and bonds. It provided that a poll tax might be put upon the people to pay the railroad tax. In fact the whole bill, as I thought, provided extraordinary measures, such as I conceived to be more favorable to the holders of the bonds than to the people or tax-payers of the county. The bill further failed to provide for the redemption of real estate when sold for taxes.

This answer objected to by attorney for respondents because of incompetency and irrelevancy.

W. A. WICKLIFFE, *Examiner.*

Question 24. You stated that you called upon the Messrs. Jno. W. & D. S. Green, at the instance of Mr. M. C. Hay, to confer with them as agents to compromise and fund the debt of Muhlenburgh county, and that you did call upon the said Greens at their office in Louisville while on your way to Frankfort to attend a session of the Legislature. Please state what the said Greens said to you about the bonded indebtedness of Muhlenburgh county and as to the compromise of said debt.

418 Answer. I cannot recall the particular session—whether it was the session of the Legislature of 1879 or that of 1881. At any rate, it was in December of one of those 2 years while I was on my way to Frankfort that I stopped off in Louisville and called upon the Messrs. Green at their bank in Louisville. My conversation with them was relative to their agency of Muhlenburgh county in funding its bonded indebtedness. I do not recollect the conversation *verbatim*, but the substance of it was that they advocated strongly the compromising and funding of the bonded indebtedness at high figures, so I thought. They stated that they had Muhlenburgh county bonds in their possession and gave the amount of them, which I do not now recollect. I did not think that the course they were persuing or trying to persue, as stated by them, was the right or proper one to fund the debt, from the fact that it looked to me that they were trying to compromise the debt at higher figures than a great many of the holders of the bonds were asking. This was about the sum and substance of my conversation with them, and was the only one I ever had with them, although they were at Frankfort during
419 the same session and during the time of their agency for the county trying to get their force bills passed through the Legislature.

Question 25. You speak of the Nortons' Bank as being interested in and pressing certain force bills through the Legislature. State now whether or not the said Nortons' Bank were holders of bonds of Muhlenburgh county, and whether either of the Nortons or all of them were engaged in projecting the Elizabethtown and Paducah railroad, and whether the said Nortons or either of them retained an interest in the said railroad after the bankrupt sale you have spoken of.

This question and the answer thereto in full objected to by attorney for respondents because of incompetency and irrelevancy.

W. A. WICKLIFFE, *Examiner*.

Answer. I met with a Mr. Norton while on my way to Frankfort to attend the session just referred to in answer immediately preceeding this; which one of the Nortons I cannot say. I think it was the oldest of the two. He spoke with me relative to the bonded indebtedness of Muhlenburgh county, and said that their bank
420 held a large amount of these bonds, and that they intended to collect them—to force their force bills through the Legislature—and that the people of Muhlenburgh county had the debt to pay. I don't know that the Nortons had anything to do with the projecting of the railroad or the buying of it after the bankrupt sale.

I will here say, while speaking of the Nortons, that while the Legislature was in session Ed. Maddan, a representative from one of the districts of Louisville where the said Nortons lived, came to me in Frankfort in the hall of the house while the Legislature was in session and said, "The Nortons are here; Dodd is here; McAtee is here," and several others whose names I don't now recollect. "We intend to pass these force bills against your county through the Legislature. We have the money. We have fifty thousand dollars and intend spending it." This is about the substance of what he said to me. This Mr. Dodd above referred to was one of the attorneys for the bondholders in the United States courts and before the committees of the two houses and made speeches before them for the bondholders. The McAtee spoken of was also one of the lawyers for the bondholders,
421 who spoke for them also. The Nortons I have seen before the committee having in charge these force bills, but I never heard them make any speeches. The language or words of Ed. Madden above spoken of I afterwards used against the bondholders in my argument before the general statutes committee and the house in regard to these force bills. After these force bills had been rejected by the house some of the Louisville members of the house, two of whom I recollect—Ed. Madden and one Mr. Alnutt—together with the bondholders and their attorneys, went into the cloak-room, and in passing the door a short time afterwards I heard great wrangling amongst them and heard Allnutt charge Madden as being responsible for the defeat of the force bills because I had quoted and used language of Madden, as above quoted, before the committee & house. There were hard words between them, and I heard Madden threaten to shoot out Allnut's guts. I will here say, while speaking of these bills, that I am confident money influence was brought to bear upon some of the members of the Legislature to get these force bills passed through by the holders of the Muhlenburgh
422 county bonds. I mean that money influence was tried to be brought to bear upon some members of the Legislature. I cannot say that any of them ever received any money for their influence or votes. Mr. J. W. Perry, from the county of Owens, a member of the house, and also a member of one of the committees having in charge some of these force bills, stated to me on the train while on our way to Louisville that he had been offered by the advocates of these bills one thousand dollars in Muhlenburgh county bonds for his influence in getting these bills passed through the committees and house. He added that he had indignantly refused and felt very indignant about the matter. This conversation was a longe one and also a private one. I served with Mr. Perry in the Legislature during 3 sessions.

Question 26. When the compromise bill, relating to the bonded debt of Muhlenburgh county, and of which you have spoken, was put on its passage after the amendments you had proposed were accepted, did you or not vote for it?

Answer. The yeas and nays were not called, but I did not vote for it.

423 Question 27. State whether or not from your opportunities for knowing the parties presenting and urging the bills you designate as force bills, during the time you were a member of the Legislature, were parties either holding the bonds of Muhlenburgh county or those representing the interest of the holders of said bonds, especially those issued to the Elizabethtown & Paducah Railroad Company. State also whether or not your opportunites for knowing were good and whether or not it is probable you were mistaken in understanding and knowing the interest represented by the agitators and advocates of these bills either in the lobby or in the committee room where you were present.

Answer. The force bills generally were for the counties along the whole line of the Elizabethtown and Puducah railroad, but in particular were directed to Muhlenburgh county. My opportunities for knowing this were excellent and there can be no doubt that the fact is as I have stated.

Question 28. Now, state whether or not, in the discharge of your duties as a representative from Muhlenburgh county in the
424 Legislatures of which you have spoken, you were on the alert, watching all movements against the interest of Muhlenburgh county as to said bonds with the view of protecting the county from all legislation providing methods for the collection of taxes for the payment of said bonds other than existed in the general laws of the land when the said bonds were purported to be issued. If you say you were, state whether or not you acquired a reliable knowledge of the plans and movements of the bondholders in regard to the legislation proposed or acted on by the Legislatures of which you were a member. If you say that you did acquire such reliable knowledge, then state whether or not the bondholders abandoned their efforts for what you call the force bills until it became evident that these bills could not pass; and also state whether or not the bondholders took hold of the funding bill or bills as a last resort, endeavoring to get into the funding bills as much of the force bills as possible; also state whether or not they manifested any expectation of realizing substantially all that the force bills sought and of getting the refunded bonds at a compromise—on reduction merely nominal—so far as they were concerned, and state whether
425 or not the force bills were used to frighten the friends of the tax-payers into the acceptance of the funding bill.

The question and answer thereto objected to by attorney for respondents.

W. A. WICKLIFFE, *Examiner.*

Answer. I was on the alert with the view or for the purpose expressed in the first clause of the question. I think I acquired a very accurate *ac*knowledge of the plans of the bondholders from daily observation and experience, and it took eternal vigilance to keep up with them. During the session of 1881 the bondholders again introduced force bills but succeeded in passing none, but they did not abandon their efforts until the session of 1883, at which time they seem- to abandon their efforts and made no efforts to pass any force

bills whatever, but relied altogether on the compromise measure as originally passed. The first force bill was introduced in 1878 and continuously until 1883, when none were introduced. In 1878,

426 when the funding or compromise bill was passed, the bondholders tried to get into this bill the force bills in the way of an amendment and did succeed in doing so before the judiciary committee of the house, but this amendment never reached the house, all of which I have in a former answer explained. In my conversation with the bondholders it seemed to be their expectation to get the bonds compromised at figures merely nominal and at small reduction. I think that these force bills were used in the long run to frighten the people and make them compromise the bonded indebtedness at high figures. I think at first they were used to make the people pay dollar for dollar, but afterwards to make the people pay a high compromise.

Question 29. State whether or not there was any application from Muhlenburgh county for the funding bill other than by bondholders or those in their interest. State how many names were on the petitions from the county of which you have spoken. Were or not the names generally in the same handwriting on the same petitions.

Answer. I cannot state as to the first clause of this question.

427 I can't say that the application was entirely from bondholers or those in their interest, but I think their influence had something to do with getting up the petitions. I cannot say how many names were on the petitions, but there was nothing like a majority of the voters of the county. I don't suppose there were one-fourth of the voters of the county on these petitions. I think there were 3 petitions with names of about 100 to each petition. There may have been more petitions, but I do not remember them. The body of the petitions was all written in the same handwriting except the signatures, but as to the names or signatures on the petitions there were different handwritings, but most of the names to each respective petition seemed to be written out by the same person—sometimes signed in ink and sometimes they were signed in pencil. From the writings on each petition it seemed that they had been carried around by different persons, and that the person carrying the petition had signed most of the names. This is the inference I drew from the appearance of the petitions.

Question 30. State, if you know, who were appointed agents

428 by the funding board of Muhlenburgh county to compromise the bonds of which you have been speaking.

Answer. The records show that C. L. Morehead, of South Carrollton, Muhlenburgh county, and Jno. W. & D. S. Green, bankers, of Louisville, were appointed as agents. These parties were all bondholders, so they have informed me; and the said Jno. W. and D. S. Green are the same men heretofore spoken of as being at Frankfort trying to get force bills passed through the Legislature.

Question 31. You have stated the extent of your acquaintance in Muhlenburgh county and with its population in 1867 and 1868. Now please state whether or not, after you became a justice of the peace and a representative in the Legislature of the said county, your knowl-

edge of the said county, its population, its property value and resources, became familiar and thorough. If you answer in the affirmative please state whether at the time the said county subscribed the stock for which her said bonds purport to have been issued or at any time since the property value and resources of the said county were or have been sufficient to yield by taxation the taxes
429 necessary to liquidate the interest and principal of said bonds and at the same time raise the State and county taxes required of them, and to clothe, educate, and maintain the family of the tax-payers without the levies being so excessive as to amount to confiscation.

This question and the answer thereto objected to by attorney for respondents.

W. A. WICKLIFFE, *Examiner.*

Answer. I have a tolerable thorough knowledge of the resources of the county, both from observation and the State auditor's reports. I am a property-owner and tax-payer in this county myself. The resources of the county at the time this subscription was voted, unaided by any dividend from the road, as was expected at the time, were wholly insufficient to pay the semi-annual interest on the bonds and to provide a fund for the redemption of the bonds at their maturity, and the same is the case now and has continued ever since voting the subscription, and if the tax was levied now to pay the interest already accrued on these bonds and a cash sale was made of the property in this county to pay said tax it would
430 take a large portion if not all of the property of the county to pay it at a forced cash sale. The amount of interest alone now due amounts to more than $400,000.00. This county is known as a pauper county, being one of the pauper county-s of the State and so classified in the auditor's report.

Question 32. It appears from the order of the county judge directing the election as to the subscription of stock before spoken of at least 10 days' notice is required to be given by the sheriff by posting at the county court-house door and at the several voting places in the said county. State whether or not 10 days' notice or any other notice whatsoever as to said election was posted as required by the said order, or did he, the sheriff, or any one for him give any written notice as required by the said order? After you have answered this question state whether 10 days' notice or 15 days' notice would afford sufficient time for the people of Muhlenburgh county or the voters thereof to consider intelligently and reach an intelligent conclusion, so far as their interest was concerned, as to
431 the proposed subscription of stock. In answering this last question I wish you to consider the extent of Muhlenburgh county geographically and the means then existing for intercommunication among the people of said county.

Answer. If there was any notice posted by the sheriff or any one for him in this county I have never heard of it nor did I see any. In my own precinct I am satisfied none were posted, as I would have seen it had it been *been* there. I don't think that either of 10

or 15 days would have been sufficiently long and adequate for the people of the county generally to have intelligently considered the matter and to know of the election.

Cross-examined by M. C. HAY, att'y for respondants:

—. State whether or not you are now or ever have been a holder or owner of any of the bonds of Muhlenburgh county—the same in controversy in this action; also state whether or not you have been in sympathy with the holders of said bonds since the year 1871. State in what county you have always lived. State whether or not
432 you were a member of the Legislature of the State of Kentucky and as such member attended the sessions of the year 1877–'78, 1879–'80, 1881–'2, & 1883–'4; and, if so, were you ever elected or did — ever attend as such member any other session of the Kentucky Legislature except the session above referred to?

Answer. I am not now and have never been the holder or owner of any such bonds. I have no special sympathy with the holders of such bonds nor have I ever been employed by the holders of them in any way. I have lived in Muhlenburgh county all my life. I was elected to and attended the 4 sessions you asked about, and these are the only ones I ever was elected to or tried to be elected to.

2. State whether or not it was before or after the passage of the act entitled An act to authorize and empower the county of Muhlenburgh to compromise and fund its outstanding bonded indebtedness, issue bonds, and levy and collect taxes to pay the same, approved March 18th, 1878, when you first met John W. & D. S. Green and how long before or after said act was passed was it when you first met said John W. & D. S. Green. During what session of the Legislature was it when the statements of E. F. Madden before re-
433 ferred to in this deposition were made?

Answer. It was after the passage of the act above referred to, and it was either 2 or 4 years afterwards; I can't now say which. I think it was in the session of 1881–'2 that I met Mr. Ed. F. Madden and he made use of the remarks above referred to.

3. What was the assessed value of the property in Muhlenburgh county subject to and listed for taxation under the laws of the State of Kentucky in the year 1868, and what is it now, in 1886?

Answer. I think the assessed property of the county in 1868 was about $2,000,000.00, and now I think that, including the 2 railroads & their property in the county, it amounts to about $2,500,000.00, and the assessed value of the railroad property in the county is about $533,000.00. Since giving this answer I have just seen a calculation from the assessor's book, from which it appears that for 1886 the taxable property of the county, excluding the railroads, is $1,904,683.00.

4. Is it or not a fact that the amendment to the act before
434 referred to as having been passed by you at a session subsequent to the one at which the original act was passed is the same one found in the published acts of the Legislature of Kentucky for the year 1879 and entitled chapter 1072 and found on pages 550 & 551 in volume No. 2 of said acts?

Answer. This is a fact and this is the same amendment before referred to.

5. Did any one—if so, who—request you to have said amendment passed, or did *or* you or not have it passed upon your own motion & for the reason that your duties to your constituents required that it should be so amended?

Answer. No one requested me, but I passed or proposed the amendment myself. I tried to make as good a thing out of a bad thing as possible.

6. Please examine the paper now handed you, being what purports to be an act to authorize and empower the county of Muhlenburgh to compromise and fund its outstanding bonded indebtedness, issue bonds, and levy and collect taxes to pay the same, approved March 18, 1878, and say whether or not it is a copy
435 of the act before referred to by you as the compromise or funding bill, which was originally prepared by Judge Chas. Eaves and amended by you before it was introduced, and whether it is a copy of the "bad thing" referred to in your last answer.

Answer. The act before referred to as the compromise or funding act is published in the acts of 1878, and I don't know whether or not the paper shown me is the copy of the bill prepared by Judge Chas. Eaves, as some change might have been made in such bill during its passage through the house. Anyhow, the paper shown me is "the bad thing" referred to in my answer to your previous question. I don't know of any change made, though, in the bill after I introduced it. The act referred to before by me in this my deposition as the compromise or funding act is found in vol. 1 of the Acts of the Legislature of Kentucky of *the* 1878, on page 601, chapter 519.

No. 7. Is it or not a fact that the bonded indebtedness mentioned in said act (which you say is published in Acts of the Legisla-
436 ture for the year 1878, commencing on page 601) the same bonded indebtedness of Muhlenburgh county that is in controversy in this action and known as the bonds of Muhlenburgh county, issued in payment of stock of the Elizabethtown and Paducah Railroad Co.?

Answer. It is a fact that it embraces the same indebtedness.

No. 8. You have said in your former answers in this deposition that Judge Chas. Eaves, Judge J. C. Thompson, Judge W. L. Delaney, Judge B. J. Shaver, Ex-Judge S. P. Love, & Eugene Eaves came to Frankfort, Ky., during the session of the Legislature of Kentucky, for 1878, and advocated the passage of a compromise bill. Now tell where said parties then resided & now reside.

Answer. Chas. Eaves, B. J. Shaver, J. C. Thompson, S. P. Love, and Eugene Eaves, who is now dead, all resided in Muhlenburgh county and still reside there. W. L. Dulaney then and now lives in Bowling Green, Warren county, Ky.

No. 9. Is not the said Judge W. L. Dulaney the same W. L. Delaney who was one of the attorneys for the county of Muhlenburgh in the suits of John Jabine & others against Muhlenburgh
437 county, in the United States court, in the year 1875 & 1876,

in regard to the bonds of Muhlenburgh county, the same mentioned in the controversy in this action; and is he or not the same W. L. Delaney who was paid $1,000.00 by the Muhlenburgh county court for his services in said suit?

Answer. He is the same W. L. Dulaney who was said to have been the attorney for the county in the John Jabine case, and the same for which $1,000.00 was paid for services rendered in the said case, although it was at first understood from his own offer that his services were to be gratuitous.

No. 10. State whether or not the said J. C. Thompson, Chas. Eaves, Eugene Eaves, or S. P. Love owned any of the said bonds of Muhlenburgh county; also state whether or not they were attorneys for any holder of said bonds at the time they came to Frankfort, Ky., and advocated the passage of said compromise act.

Answer. I do not know that any of the gentlemen named were owners of any of the bonds, nor do I know that any of them were attorneys for the bondholders except S. P. Love, who told
438 me he was representing some bonds against the county, and showed me some of them in his office. He was attorney for R. C. Hazlip in his suit against the county on the coupons of the said bonds.

No. 11. If the said parties, viz., Charles Eaves, Eugene Eaves, S. P. Love, J. C. Thompson, B. J. Shaver, & W. L. Delaney, when they reached Frankfort, Ky., as before stated by you, claimed that they represented any one other than themselves, tell whom they claimed to be representing.

Answer. They stated that there had been a meeting held at the court-house here at Greenville on common pleas court day, and that they had been appointed to come up to Frankfort by this meeting.

No. 11. Where are the petitions that you say that were sent you asking the passage of the bill drafted by Judge Chas. Eaves mentioned by you in this deposition. If you know or have any idea where said petitions can be found, then tell where said petitions can be found.

Answer. They were filed with the judiciary committee. What that committee did with them I can't state. I don't know
439 where they can be found. Possibly they may be found in the archives of the State.

No. 12. You have said in this deposition that you did not vote in the Kentucky Legislature at the session of 1878 for the passage of the act before referred to as the compromising or funding act. Now, did you vote at all on the question; if not, why not?

Answer. The vote, as I have stated before, was taken *viva voce* and the yeas and nays were not called, and I did not vote because of the sections 19 and 20 to which I objected and thought I could not vote for and be consistent with my oath.

No. 13. If you had undertaken to have had said bill or funding act defeated you could have done so if you had tried to do so, could you not?

Answer. I don't know whether I could or not.

No. 14. Who is the Mr. Feland mentioned by you in this deposi-

tion. Do you mean John Feland, of Hopkinsville, & who was in 1878 a member of the Legislature of Kentucky from Christian county, Kentucky?

Answer. It is the same Jno. Feland and the same party who
440 now has a case pending in the court of appeals against Muhlenburgh county on coupons of the bonds mentioned in this action.

No. 15. You mention in this deposition about petitions being sent to said Feland from Hopinsville, Ky., signed by people living there, in which petition you thought Muhlenburgh was misrepresented. Now, how far is Hopkinsville from Greenville; how far from the line between Muhlenburgh county & Christian county?

Answer. I suppose Hopkinsville is 20 or 25 miles from the county line between Christian and Muhlenburgh county, and the distance from the 2 counties' line to Greenville is about 10 miles, making it some 30 or 35 miles from Hopkinsville to Greenville.

No. 16. Who besides Sam'l B. Thomas made speeches in Muhlenburgh county, Kentucky, advocating that the people of Muhlenburgh county should subscribe for stock in the Elizabethtown & Paducah Railroad Co.? Give their names, and tell where they then lived.

Answer. I don't remember of hearing any one else making speeches besides S. B. Thomas, and heard him only once.

441 No. 17. How long before the election held on the 30th day of May, 1868, was the question as to whether or not Muhlenburgh county should subscribe for the stock of said Elizabethtown & Paduach Railroad Company canvassed or talked about in Muhlenburgh county, Ky?

Answer. A railroad had been talked of for several months before, but the question of voting stock of $400,000.00 to the railroad was discussed only a few days before the election in my section of the county.

No. 18. Is it or not a fact that during the year 1867 petitions were circulated and signed by a majority of the voters of Muhlenburgh county asking the county court of Muhlenburgh county to subscribe for $300,000.00 of the capital stock of said Elizabethtown & Paducah Railroad Co. and pay for said stock by delivering the bonds of said county at par, said bonds to bear 6 per cent. interest, and also asking said county court to subscribe for $200,000.00 of the capital stock of the Owensboro' and Russellville Railroad Co. and pay for same in the bonds of the county at par & bearing 6 per cent. interest?

Answer. I do not know. I don't think I ever saw one, and
442 I never signed any of them, although it seems to me I have heard of such petitions.

No. 19. You say in reference to the act of 1868, amending the charter of the Elizabethtown & Paducah Railroad Co., that it was not possible for the said act to have been published or circulated before the said election was held unless some one had obtained a copy of the act from the public printer. Now, is it or not a fact that a certified copy of the act could have been procured from the secretary of state soon after its approval and then had the act published

in pamphlet or circular form and distributed throughout the county prior to said election, and is it or not a fact that you distributed some of the publications of the act made in this way?

Answer. They could have been distributed in the way you mention, but I never saw any of them, nor did I ever distribute any of them. I correct your statement about what I said about the distribution of the act. I did not say that it was impossible except within 15 days of the election, and to have this distribution in the way suggested in the question would have been unusual and contrary to the usual custom.

443 No. 20. You say in this deposition that prior to the term of the Muhlenburgh county court held in May, 1874, that it was correctly reported and generally understood in the county that an agent of the bondholders had requested Judge Love to have the justices of the peace to levy the tax to pay the coupons on the bonds mentioned in the pleadings of this action instead of levying it himself. Now, you can name a single individual who heard such a rumor or statement? If so, tell his name.

Answer. I heard it generally rumored; I do not now recollect of hearing any particular person saying anything about it.

Further this deponent sayeth not.

LOUIS JONES.

The deposition of J. J. WOOD, taken on behalf of complainants, is as follows, to wit:

Deposition of J. J. Wood.

Question 1st by attorney for the complainants. State your name, age, residence, and occupation.

Answer. My name is James J. Wood; I am 68 years of
444 age; reside in Muhlenburgh county, Ky., and am a farmer by occupation.

Question 2nd. Have you ever been one of the justices of the peace for Muhlenburgh county in commission? If you state that you have been such a justice of the peace, say about what time you were first commissioned as such and whether or not from that time continuously up to the time you ceased to be a justice of the peace you were duly elected and commissioned for successive terms; also state about the time you ceased to be a justice of the peace for said county.

Answer. I used to be one of the justices in commission for Muhlenburgh Co. when I was first elected. I don't now remember, but think it was before the civil war. I think I was elected continuously for each successive term from the first time I was elected up to the time I quit. I can't now say what year it was I resigned, but do remember that I resigned at the same time that all the other justices of the county resigned. I remember it was the same time that Louis Jones & Jno. Morton and the balance of the justices resigned. I remember that it was after the county judge, S. P.
445 Love, had requested the justices of the county to make a levy to pay the interest on the bonds of Muhlenburgh county is-

sued to the Elizabethtown & Paducah Railroad Co. I do not file my commissions herein, as the attorney for the respondents waive production of them.

Question 3. State whether or not the county judge of Muhlenburgh county ever called the justices of the peace of said county together and asked or proposed to them to levy taxes for the payment of interest on the bonds of said county claimed to have been issued to the Elizabethtown & Paducah Railroad Company. If they were called together for the said purpose, was it or not more than once?

Answer. I recollect that we were called together only one time for this purpose.

Question 4. Please state what occurred on that occasion. State all that was said or done, so far as you recollect.

Answer. On the day that the justices were met to take some action on the bonded indebtedness County Judge S. P. Love, made some talk to them, and asked them to make a levy to pay the interest
446 on the bonds bought in by Hancock, and also asked what they were going to do about them. J. H. Morton, one of the justices present, got up and said he didn't propose to have anything to do with it. All of the justices talked about this matter while in session and refused to have anything to do with it. Love got somewhat excited and talked in a threatening manner to us, and B. E. Pittman got up and said to Judge Love and the magistrates, I told you, Judge Love, when the first levy was made, that *that* you ought to have called the magistrates together, and you said, "No; I propose to take the bull by the horns." After Pittman said this Love seemed to be still somewhat excited and talked to the justices in a threatening manner because they would not make the levy, but did not deny what Pittman had stated about him. Judge J. C. Thompson, who was present, then got up and made a speech, and said he thought the magistrates ought to be allowed to do as they pleased about this thing. I don't know now whether Pittman was a member of the court or not.

Question 5. Were you present at the election ordered by S.
447 P. Love for a subscription of stock in the Elizabethtown and Paducah Railroad Compauy? Did you vote? If you say you did not vote, why did you fail to vote at said election?

Answer. I was present at the election, but did not vote, as there was some dispute over it—some contending that it would be best for the county and some contending that it would not be the best—so I did not know what to do about it and failed to vote. I don't know whether I had time or not to decide what was best about the matter.

Further the deponent sayeth not.

J. J. WOOD.

The deposition of Q. B. COLEMAN, taken on behalf of complainants, is as follows, to wit:

Deposition of Q. B. Coleman.

Question No. 1. State your name, age, residence, and occupation.

Answer. I am called and named Quintus Berry Coleman; my age is 39 years; reside in Greenville, Muhlenburgh county, Ky., and am at present the presiding judge of the Muhlenburgh county court.

448 Question No. 2. As county judge of Muhlenburgh county have you the custody of the proceedings and record books of the funding board created by the act of March, 1878, and entitled "An act to authorize and empower the county of Muhlenburgh to compromise and fund its outstanding bonded indebtedness," etc.?

Answer. As such I have custody of some of the records and proceedings. I have recently come into my office and I can't say whether or not I have them all in my custody, but I have a record book beginning on the 4th of June, 1878, and with various meetings recorded therein until September the 15th, 1885. I will here state that by virtue of my being the county judge I am by the provisions of said act made president of and a member of the funding board.

Question 3. Please file herewith and make part of this your deposition a certified copy of the proceedings of the funding board, the record as exhibited in the memoranda book containing the proceedings of the funding board of Muhlenburgh county.

Answer. I herewith file a copy of the proceedings of the
449 funding board, marked 1 with the deposition of Q. B. Coleman, and make it part of this my deposition.

The funding board books show that $155,900 of the old bonds have been retired, besides a few detached coupons belonging to other bonds, and the same books show that the funding board caused to be issued $93,250 of new bonds.

Further this deponent sayeth not.

Q. B. COLEMAN.

The exhibit above referred to, marked 1, Q. B. Coleman, is as follows:

EXHIBIT "1," Q. B. Coleman.

Proceedings of the funding board of Muhlenburgh county, copied from the memorandum book of said board by Q. B. Coleman, J. M. C. C.

JULY 1, 1881.

The board met.

Present: J. C. Thompson, J. M. Milliard, W. F. Ward, W. S. Humphrey.

On motion, the board adjourned to meet on Monday, the 7 day of Feb'y, 1881.

J. C. THOMSON, *Chairman.*

FEB'Y 5, 1881.

The board met.

450 Present: W. S. Hay, W. G. Jones, W. F. Ward, Eli Wootton.

The chairman being absent, W. S. Hay was called to the chair and J. E. Wootton was elected secretary.

No business of importance being called, the board, on motion, adjourned.

J. E. WOOTTEN.

FEB'Y 8, 1881.

At a meeting called by the chairman of the funding board of Muhlenburgh county for the 8th day of February, 1881, the board met at the law office of J. C. Thomson on the 8th day of Feb'y, 1881.

Present: J. C. Thomson, J. B. Milliard, J. A. Stokes, W. G. Jones, J. E. Wooten, W. F. Ward, W. S. Humphrey.

The board was called to order by the chairman and proceeded to business.

W. S. Humphrey moved the adoption of the following resolution, to wit:

Resolved, That we direct J. C. Thomson, judge of Muhlenburgh county, to make a levy of the taxable property of Muhlenburgh county to the amount of 75 cents on the $100.00 worth of property to pay the interest on the new bonds and to create a sinking fund to redeem the same and pay for funding our bonds and to pay the expenses of the board.

451 W. F. Ward moved to substitute $6,000 instead of $12,000, and, the yeas and nays being called, the vote stood thus: Yeas, Ward, Wootin, Stokes; nays, Thomson, Milliard, Jones, Humphrey.

The substitute was declared rejected.

The question then coming on the original resolution and the yeas & nays being called, the vote stood thus: Yeas, Thomson, Milliard, Jones, Stokes, Humphrey.

W. S. Humphrey moved the following resolution, to wit:

Resolved, That J. C. Thomson be appointed a committee to employ counsel to defend the county in the mandamus now pending in the Federal court.

The yeas and nays being called, the vote stood as follows: Nays, Ward; yeas, Thomson, Milliard, Stokes, Jones, Wootten, Humphrey.

On motion of J. E. Wootten it is ordered that our contract with John W. & D. S. Green be re-cinded, and the chairman is directed to notify them of the fact.

Ordered that the board adjourn untill the 16th day of Feb., 1881.

J. C. THOMSON, *Chairman.*

FEB. 16, 1881.

At a meeting of the funding board held at the office of J. C. Thomson on the 16 d-y of Feb., 1881.

452 Present: J. C. Thomson, chairman; J. B. Milliard, J. A. Stoes, J. E. Wooten, W. S. Humphrey.

On motion of J. E. Wootten it is ordered that the treasurer of Muhlenburgh pay J. C. Thomson the sum of one thousand dollars out of the levy of 1881 as part of his salary as county judge.

It is ordered that the treasurer of Muhlenburgh county pay to J. C. Thomson the sum of five hundred dollars, to be used by him in paying an attorney to defend the mandamus proceedings in the Federal court against *against* the county judge of Muhlenburgh county.

It is ordered that the treasurer of Muhlenburgh county pay Wm. Irvine the sum of one hundred and ninety-five dollars and $\frac{70}{100}$, with interest from 2 day of March, 1880, until paid, being the amount of 2 notes executed by J. C. Thomson and others for money to pay for printing bonds and advertising and securing books, and the further sum of one hundred and seventy-five dollars & $\frac{50}{100}$, with interest from 6th day of April, 1880, until paid, being the amount of another note executed by J. C. Thomson and others for same purpose.

453 It is ordered that the treasurer pay W. S. Hay seven dollars for amount paid on expenses of Thomson & Jones to Louisville.

Copied Sept. 4, '82.

It is ordered that the treasurer of Muhlenburgh county pay W. G. Jones seven dollars for amount paid on expenses of self & Thomson to Louisville.

Copied Feb'y 6, 1881.

It is ordered that the treasurer of Muhlenburgh county pay J. B. Milliard seven dollars for amount of expenses of Jones & Thomson to Louisville.

It is ordered that the treasurer of Muhlenburgh county pay Ury Woodson four dollars for printing advertisements.

Copied Feb. 13, 1882.

It is ordered that the treasurer of Muhlenburgh pay J. C. Thomson the following amount, to wit:

To amount paid on expenses of self & Jones	$7 00
" " " expenses on 2 trips to Frankfort	48 60
" " " expressage on bonds	6 55
" " " Green Bros. as commission	1 65
" Bradley & Gilbert for printing funding act	22 75
For copy of order in Federal court	1 00
	85 55

Copied Dec'r 26, 1881.

454 It is ordered that the treasurer of Muhlenburgh county pay W. S. Humphrey the sum of nineteen dollars & 75 cents for amount advanced to pay interest on bonds due Jan. 1, 1881.

W. S. Humphrey offered a resolution in writing in reference to proposed compromise, which was continued for the present.

On motion, the board adjourned until Saturday, the 19th day of February, 1881.

J. C. THOMSON, *Chairman.*

FEB'Y 19, 1881.

The board met pursuant to adjournment.

Present: J. C. Thomson, chairman; J. B. Milliard, J. A. Stokes, W. S. Humphrey.

The board was called to order by the chairman. The minutes of the last meeting *was* read and approved and ordered to be certified by the chairman.

On motion, the board adjourned until the first *February* in March, 1881.

Att.: J. C. THOMSON.

MARCH 1, 1881.

The board met pursuant to adjournment and was called to order by the chairman.

The minutes of last meeting were read, approved, and ordered to be recorded by the chairman.

On motion, the board adjourned until the 3rd Tuesday in March, 1881.

Att.: J. C. THOMSON, *Chairman.*

455 MARCH 15, 1881.

The board met, and the following members were present, to wit: J. C. Thomson, chairman; J. B. Milliard, J. A. Stokes, Eli Wooten, W. F. Ward.

The board was called to order by the chairman. It was moved by W. F. Ward that the chairman be directed to copy the proceedings of this board made up to the first day of January, 1881, and transfer them to *them to* the county clerk for record, which motion, being seconded, was unanimously adopted.

On motion, the board adjourned until the first Tuesday in April, 1881.

Att.: J. C. THOMSON, *Chairman.*

APRIL 5, 1881.

The board met.

Present: J. B. Milliard, W. F. Ward, J. A. Stokes.

No quorum being present, the board adjourned until next regular meeting.

APRIL 19TH, 1881.

The board met.

Present: J. C. Thomson, chairman; J. B. Milliard, J. A. Stokes, W. G. Jones, W. F. Ward, W. S. Humphrey.

The meeting was called to order by the chairman, and, on motion, adjourned until next regular meeting.

Att.: J. C. THOMSON, *Chairman.*

MAY 3, 1881.

The board met.

456 Present: J. C. Thomson, chairman; J. B. Milliard, J. A. Stokes, W. F. Ward, W. S. Humphrey.

The board was called to order by the chairman, and, on motion, adjourned until next regular meeting.

Att.: J. C. THOMSON, *Chairman.*

MAY 17, 1881.

The board met pursuant to adjournment.

Present: J. C. Thomson, chairman; J. B. Milliard, J. A. Stokes, W. G. Jones, W. F. Ward, W. S. Humphrey.

The board was called to order by the chairman, and the board, on motion, adjourned until next regular meeting.

Att.: J. C. THOMSON, *Chairman.*

JUNE 7, 1881.

At a meeting of the funding board held at the law office of J. C. Thomson, in Greenville, Ky., on the 7th day of June, 1881.

Present: J. C. Thomson, chairman; J. B. Milliard, John A. Stokes, W. G. Jones, W. F. Ward, W. S. Humphrey.

The board was called to order by the chairman.

On motion, it is ordered that the treasurer of Muhlenburgh county pay W. F. Ward three dollars for amount paid on Thomson's expenses to Louisville.

DEC'R 26, 1881.

457 On motion, it is ordered that the treasurer of Muhlenburgh county pay W. S. Humphrey three dollars, amount paid on Thomson's expenses to Louisville.

Copied Dec. 26, 1881.

On motion, it is ordered that the treasurer of Muhlenburgh county pay W. S. Humphrey the sum of fifty-one dollars for his *per diem* for 51 days' attendance as member of the funding board.

Copied Feb. 6, 1881.

On motion, it is ordered that the treasurer of Muhlenburgh county pay J. B. Milliard the sum of forty-nine dollars for forty-nine days' attendance as member of the funding board.

Copied Sept. 4, 1882.

On motion, it is ordered that the treasurer of Muhlenburgh county pay W. G. Jones the sum of thirty-eight dollars for 38 days' attendance as a member of the funding board.

On motion, it is ordered that the treasurer of Muhlenburgh county pay W. S. Hay the sum of eighty dollars for 40 days' attendance as a member of the funding board.

On motion, it is ordered that the treasurer of Muhlenburgh county pay J. E. Wooten the sum of fifty-four dollars for 27 days' attendance as a member of the funding board.

458 Copied Sept. 4, 1882.

On motion, it is ordered the treasurer of Muhlenburgh county pay J. A. Stoaks eight dollars for eight days' attendance as member of the funding board.

Copied ——.

On motion, it is ordered that the treasurer of Muhlenburgh county pay J. C. Thomson the sum of ninety-six dollars for 48 days' attend-

ance as member of the funding board and keeping the records of the funding board and having the same copied and corresponding on behalf of the board.

W. F. Ward, being present, refused to allow any appropriation made in his behalf.

On motion of W. S. Humphrey, it is ordered that the county judge is directed to modify the order making a levy of 75 cents on the $100.00 worth of property made on the — day ——, 1881, so that it shall be a levy of 10 cents on the $100.00 instead of a levy of 75 cents on the $100.00 for the same purposes mentioned in the order referred to before.

On motion, the board adjourned.

Att.: J. C. THOMSON, *Chairman.*

JULY 19, 1881.

The board met.

459 Present: J. C. Thomson, chairman; J. B. Milliard, W. G. Jones, W. F. Ward, W. S. Humphrey.

The board was called to order by the chairman.

On motion, it is ordered that the board adjourn until the next meeting.

Att.: J. C. THOMSON, *Chairman.*

OCT. 9, 1881.

The board met.

Present: J. C. Thomson, chairman; J. B. Milliard, W. F. Ward, W. S. Humphrey, J. A. Stoakes.

There being no business of importance, the board adjourned.

J. C. THOMSON, *Chairman.*

FEB. 21, 1882.

The board met.

Present: J. C. Thomson, chairman; J. A. Stokes, W. F. Ward, W. S. Humphrey.

There being no business, the board adjourned.

Att.: J. C. THOMSON, *Chairman.*

SEPT. 4, 1882.

At a meeting of the funding board at the law office of J. C. Thomson, in Greenville, on the 4 day of Sept., 1882.

Present: J. C. Thomson, chairman; J. B. Milliard, J. A. Stokes, W. G. Jones, W. S. Humphrey.

The board was called to order by the chairman.

Copied Sept. 4, 1882.

On motion, it is ordered that the treasurer of Muhlenburgh county pay J. W. & D. S. Green $2.10, am't due them for commissions.

460 Copied Sept. 4, 1882.

On motion, it is ordered that the treasurer of Muhlenburgh county pay J. C. Thomson the sum of $9.25, amount paid expressage on bonds.

On motion, it is ordered that the treasurer of Muhlenburgh — pay

J. B. Milliard six dollars for 3 days' attendance as member of the funding board.

Copied Sept. 4, 1882.

On motion, it is ordered that the treasurer of Muhlenburgh county pay J. A. Stokes eight dollars for 4 days' attendance as member of the funding board.

Copied Sept. 4, 1882.

On motion, it is ordered that the treasurer of Muhlenburgh county pay W. G. Jones the sum of four dollars for 2 days' attendance as member of the funding board.

On motion, it is ordered that the treasurer of Muhlenburgh county pay W. F. Ward the sum of six dollars for 3 days' attendance at funding board.

On motion, it is ordered that the treasurer of Muhlenburgh county pay W. S. Humphrey eight dollars for 4 days' attendance as member of the funding board.

461 On motion, it is ordered that the treasurer of Muhlenburgh county pay J. C. Thomson the sum of thirteen dollars for 4 days' attendance as a member of the funding board and for keeping the records and copying orders.

Ordered that the board adjourn until the next regular time, unless sooner called together by the county judge.

J. C. THOMSON, *Chairman.*

FEB'Y 5, 1884.

At a meeting of the funding board of Muhlenburgh county, in the office of John H. Morton, judge of Muhlenburgh county, in Greenville, Kentucky, held on the 5th day of February, 1884.

Present: John H. Morton, judge Muhlenburgh county court.
John E. Mills, member for district No. 2 (Bogess).
Alny E. Newman, " " No. 3 (Court-House).
Gilbert V. Glen, " " No. 4 (Paradise).
William Young, " " No. 7 (Central City).

The said Mills, Young, Newman, and Glen were severally sworn to faithful- perform and discharge their duties as members of the funding board of Muhlenburgh county, to the best of their ability and judgment, according to law.

On motion of A. E. Newman, it is ordered that the chair-
462 man of the funding board advertise in the Muhlenburgh Echo and Courier-Journal for the space of — that the board is organized for the purpose of *the purpose of* receiving propositions from bondholders of Muhlenburgh Co. *bond* what they will take in new bonds.

On motion, the board adjourned to meet on the 1st Tuesday in M'ch, '84.

J. H. MORTON, *Chairman.*

MARCH 4, 1884.

The board met pursuant to adjournment.

Present: J. H. Morton, chr.; J. E. Mills, G. V. Glen, Wm. Young.

W. H. Whitaker presented himself and took the oath to faithful-y

AUG. 5, 1884.

Board met at the usual hour.

Present: J. H. Morton, chr.; Martin Kittinger, J. E. Mills, G. V. Glen, W. H. Whitaker, A. E. Newman.

On motion, the board adjourned to meet on the first Tuesday in Sept. next.

J. H. MORTON, *Char.*

SEPT. 2, 1884.

Board met pursuant to adjournment.

The members elect presented their certificates of election.

Present: J. H. Morton, judge Muhlenburgh county court.

Martin Kittinger,	member	for district	No. 1 (South Carrollton).
J. E. Mills,	"	"	No. 2 (Boggess).
Alny E. Newman,	"	"	No. 3 (Court-House).
Samuel Weir,	"	"	No. 4 (Paradise).
W. H. Whitaker,	"	"	No. 5 (Myers).
W. B. Stewart,	"	"	No. 6 (Summers).
Wm. Young,	"	"	No. 7 (Central City).

467 The said Kittinger, Mills, Newman, Weir, Whitaker, Stewart, and Young were several-y sworn to faithful-y perform and discharge their duties as members of the funding board of Muhlenburgh county to the best of their ability and judgment, according to law.

There being no business to transact, the board adjourned.

J. H. MORTON, *Chr.*

SEPT. 16, 1884.

The funding board met at the office of J. H. Morton.

Present: J. H. Morton, chr.; J. E. Mills, Martin Kittinger, Alny E. Newman, S. M. Weir, W. H. Whitaker, W. B. Stewart, Wm. Young.

On motion of J. E. Mills, and seconded by Wm. Young, Alny Newman was elected by a unanimous vote as committee in *lue* of G. V. Glen, whose time had expired.

There being no further business before the board, they adjourned.

J. H. MORTON, *Chair.*

OCT. 7, 1884.

The funded board of Muhlenburgh county convened in regular session this day at the office of Judge J. H. Morton, in Greenville, Ky.

Present: J. H. Morton, chairman; Martin Kittinger, J. E. Mills, Alney E. Newman, S. M. Weir, W. H. Whitaker, W. B. Stewart, Wm. Young.

468 On motion of Alney Newman, which was seconded by J. E. Mills, the following resolution was adopted by the following vote, viz:

Yeas—J. E. Mills, Martin Kittinger, Alney E. Newman, S. M. Weir, W. H. Whitaker, Wm. Young.

Nays—W. B. Stewart.

Which resolution is as follows:

Resolved by the funding board of Muhlenburgh county, That the county court of said county be and is requested to levy upon all real and personal estate in said county, including all amounts given in under the equalization law, subject to taxation under the general revenue laws of this Commonwealth a tax of ten cents upon each and every one hundred dollars' worth thereof as shown by the assessment-rolls of said county for the year 1884, to pay the accrued and accruing interest on the bonds issued under authority of an act of the General Assembly of the Commonwealth of Kentucky entitled An act to authorize and empower the county of Muhlenburgh to compromise and fund its outstanding bonded indebtedness, issue bonds, and levy and collect taxes to pay the same, approved March 18, 1878, and for the other purposes provided for in said act.

469 On motion, the board adjourned.

J. H. MORTON,
Chairman of the Funding Board of Muhlenburgh County.

Nov. 18, 1884.

The board met on this day at the office of J. H. Morton.

Present: J. H. Morton, chair.; J. E. Mills, Alney E. Newman, W. H. Whitaker, Wm. Young, & W. B. Stewart.

Minutes of last meeting read and approved.

A communication was read from some parties in Chicago asking for information. Alny E. Newman was requested to communicate with them. The chairman was directed to communicate with John W. Green, at Louisville, Ky.

No other business before the board, they adjourned.

J. H. MORTON, *Chair.*

DEC'R 3, 1884.

The board met at the office of J. H. Morton.

Present: J. H. Morton, chairman; Martin Kittinger, J. E. Mills, A. E. Newman, W. H. Whitaker, S. M. Weir, W. B. Stewart, Wm. Young.

Minutes of last meeting read and approved.

On motion, A. E. Newman was requested to draft a resolution to be considered by the board at its next meeting.

J. H. MORTON, *Chair.*

DEC. 16, 1884.

470 The board met at the office of J. H. Morton.

Present: J. H. Morton, Martin Kittinger, J. E. Mills, A. E. Newman, W. H. Whitaker, S. M. Weir, W. B. Stewart, & Wm. Young.

Minutes of last meeting read and approved.

On motion of A. E. Newman, the following resolution was adopted:

Whereas we believe the unsettled condition of the bonded indebtedness of Muhlenburgh is detrimental to the interest and prosperity

of her people, and in order to rid our people of this embarrassment and in order to place ourselves on an equality with our sister county-s: therefore,

Be it resolved by the funding board of Muhlenburgh county, — we offer to the holders of our outstanding bonded obligations 30 per cent. of the debt owed by the people upon said obligations. Said creditors are to accept in lieu of the obligations now held by them twenty-year six per cent. bonds; be it understood, however, that unless the holders of all our bonded obligations, on or before the 1st day of March, 1885, accept this proposition, then the same is null and void; be it understood, however, by this board that we reserve the right, although this proposition be not accepted by all the holders of our obligations, to fund any *any* part of the debt
471 upon such conditions and stipulations as may be agreed upon between the board and the holders of bonds. It is further understood that no interest upon said obligations is to be computed after the date of this resolution; that the holders of our obligations be requested to report immediately the number and amount of bonds held by them to the chairman of this board, J. H. Morton.

The yeas and nays being called for, the vote stood:

Yeas—Martin, Kittinger, J. E. Mills, A. E. Newman, W. W. Whitaker, Wm. Young.

Against—S. M. Weir, W. B. Stewart.

It is ordered by the board that J. E. Mills, a member of this board, be authorized to correspond with J. W. Green, of Louisville, Ky., to ascertain whether or not he will obligate himself to secure as much as $250,000 in Muhlenburgh county bonds—if so, to inform him, as their agent—at ½ of one per cent. upon the new bonds funded.

On motion of Wm. Young, J. T. Young is hereby appointed to settle with E. Rice, treas. of funding board, & F. N. Isbell, deputy sheriff for G. O. Prouse, S. M. C.

Being no further business, the board adjourned.

J. H. MORTON, *Chr.*

DEC. 26, 1884.

472 The board met at the office of J. H. Norton in special session by order of chairman.

Present: J. H. Morton, Martin Kittinger, J. E. Mills, W. B. Stewart, Wm. Young, A. E. Newman.

Minutes of last meeting past untill the next regular meeting.

On motion of Wm. Young, W. H. Yost, Jr., be appointed to assist J. T. Young in a settlement with E. Rice, treas. of the funding board of Muhlenburgh county, and F. N. Isbell, D. S. for G. O. Prouse, S. M. C.

On a call for the yeas and nays *being called*, it was continued untill next meeting.

On motion, W. H. Yorst, Jr., is hereby appointed to assist J. T. Young with a settlement with the treasurer & F. N. Isbell, D. S., for G. O. Prouse, *C.* M. C.

The proposition to confer with J. W. Green was adopted in re-

gard to funding of the Muhlenburgh county bonds, and therefore the following resolution was adopted by this board:

Resolved, That the funding board of Muhlenburgh county hereby offer in settlement and compromise of all the outstanding bonded indebtedness due on its bonds and coupons on the 1st day of January, 1885, 30 cents on each one dollar of said indebtedness payable in the bonds of Muhlenburgh county, to be dated July 1st,
473 1878, and to become due and payable twenty years thereafter, with interest coupons attached for semi-annual — thereon from the first day of Jan., 1885, until the maturity of bonds, at the rate of six per cent. per annum.

JAN. 6, 1885.

The funding board convened in the office of J. H. Morton.

Present: J. H. Morton, chairman; Martin Kittinger, J. E. Mills, A. E. Newman, W. B. Stewart, Wm. Young.

Minutes of last meeting read and approved.

On motion the funding — allowed J. T. Young and W. H. Yost, Jr., five dollars when they make settlement with E. Rice, treas. of funding board, & F. N. Isbell, D. S., for G. O. Prouse, M. C., dec.

Whereas John W. & D. S. Green, of Louisville, Kentucky, and C. L. Morehead, of South Carrollton, Kentucky, have signified their willingness to act as the agents of Muhlenburgh county in the settlement, compromise, and refunding of its said bonded indebtedness in accordance with proposition above set out:

Now, therefore, the county of Muhlenburgh, acting by and through the funding board of Muhlenburgh county, hereby appoint and constitute the said John W. & D. S. Green and C. L. Morehead its sole agents for the purpose of negotiating with the holders of the
474 outstanding bonds and coupons of Muhlenburgh county, and to accomplish the refunding opperation as nearly as may be in the speediest manner. Said agents are authorized at once to enter upon said negotiations. Muhlenburgh county, by its constituted authorized, will issue its new bonds in settlement of its indebtedness, at the rate above set out, in such denominations as are by said act authorized as said agents shall from time to time direct to be issued in exchange for the old bonds and coupons: Provided, that as much as one hundred and twenty-five thousand dollars of the principal of the old bonds, with such coupons as are attached thereto, are secured for exchange on or before the first day of March, 1885.

After said amount of $125,000 of said old indebtedness is refunded, as above contemplated, the county is to issue the new bonds in exchange for the old indebtedness as rapidly as the agents shall notify its authorities — their readiness to exchange the old for the new bonds and coupons. When said agents shall give notice to the president of said funding board that a stated amount of old bonds and coupons are ready for refunding it shall be the duty of the county,
475 by its proper authorities, to issue new bonds sufficient to effect the exchange and send them to the Bank of Commerce in Louisville, Kentucky, with direction to said bank to deliver in exchange for the old bonds and coupons to be redeemed by them.

After as much as $125,000 of said old bonds and coupons are taken up, the county, if deemed advisable, will issue new bonds for as much as $5,000 and deposit them in said Bank of Commerce in order to facilitate the exchange for old bonds and coupons which may be presented by said agents for exchange.

For compensation as agents for Muhlenburgh county in negotiating and settling said indebtedness with the bondholders on the terms herein set out said county of Muhlenburgh agrees to pay said agents in full for all their services fifty cents on each one hundred dollars' worth of the old debt compromised and refunded up to and including one hundred thousand dollars of said indebtedness, and sixty cents on each $100.00 of said indebtedness which shall be settled and refunded through their agency over one hundred thousand dollars, and, believing that said debt can be settled on better terms and less cost to the county by having but one agency,
476 the county will not treat directly with bondholders or their agents in settling said indebtedness. The commission to said agents shall be payable in the new bonds of the county, at par value, as the same shall be earned. The county will pay the cost of transmitting the new bonds to the Bank of Commerce and the agents are to pay the cost of transmitting the old bonds & coupons to the Bank of Greenville, to which they shall be sent when exchanged.

In testimony whereof the said county of Muhlenburgh, acting by its said funding board, has hereunto subscribed its name this 6th d-y of January, 1885.

Said resolution having received a second —, it was adopted by the following vote:

Yeas—Martin Kittinger, J. E. Mills, A. E. Newman, Wm. Young—4.

Nays—W. R. Stuart—1.

On motion of A. E. Newman, *to* board adjourned to meet the 1st Tuesday in February, 1885.

J. H. MORTON, *Chair.*

FEB. 3, 1885.

The funding board met at the office of J. H. Morton.

Present: J. H. Morton, chairman; Martin Kittinger, J. E. Mills, A. E. Newman, S. M. Weir, W. H. Whitaker, Wm. Young.

Minutes of last meeting — and approved.

477 FEB. 21, 1885.

The funding board of Muhlenburgh county, Ky., met at the office of J. H. Morton in special session by call of the chair.

Present: J. H. Morton, chairman; Martin Kittinger, J. E. Mills, S. M. Weir, Wm. Young.

A. E. Newman, C. L. Morehead, and J. W. Green appeared before the funding board and reported that they had secured and had ready for delivery, to be funded according to the terms of their contract with this board made January 6th, 1885, the sum of ninety thousand & six hundred dollars of the face value of old bonds of Muhlenburgh county—in other words, they had the sum of $90,600

of the principal of the old bonds of Muhlenburgh county, Ky., together with the coupons attached thereto, besides other coupons formerly attached and belonging to other bonds not in their possession.

It is ordered that J. H. Morton, chairman of this board, fund said old bonds, with coupons attached, and said coupons in the possession of said Morehead & Green belonging to bonds not in their possession by delivering to them the new bonds issued under the act of General Assembly of Kentucky approved March 18, 1878, in
478 a sum equal to 30 cents to the dollar on the amount due on the principal & interest of said bonds and coupons in settlement and in order to fund said old bonds & coupons.

It is further ordered — said contract between said C. L. Morehead and J. W. & D. S. Green with this board of date January 6, 1885, be extended so as to allow them until the 15th day of March, 1885, to deliver the balance of the $125,000 of the principal of said bonds after deducting $90,600.00 bonds ordered herein to be funded.

It is further ordered that said J. H. Morton deliver to said J. W. & D. S. Green & C. L. Morehead $5,000.00 in face value, with coupons maturing July 1st, 1885, of the new bonds issued by Muhlenburgh county, Kentucky, under said act of the General Assembly approved March 18, 1878, to be used by them in funding old bonds. Said J. H. Morton is directed to take a receipt from said Green & Morehead for the said $5,000.00 bonds so delivered, and also take from them a bond with good security that they will account for said bonds by delivering to this board on or before the 15 day of March, 1885, the old bonds of Muhlenburgh county, Ken-
479 tucky, in a sum so that thirty per cent. of the amount on said bonds & coupons will equal to the said $5,000.00 new bonds, and in the event they fail to do this they will return the said $5,000.00 in new bonds or pay this board the sum of five thousand dollars on the 15th day of March, 1885.

On motion, the foregoing was unanimously adopted.

Then the board adjourned.

J. H. MORTON, *Chairman.*

MARCH 3, 1885.

The funding board of Muhlenburgh county met at the office of J. H. Morton.

Present: J. H. Morton, chair.; Martin Kittinger, J. E. Mills, A. E. Newman, W. H. Whitaker, Wm. Young.

The minutes of special meeting of date of Feb. 21, 1885, read & approved, &, on motion, the board adjourned to give the tax-payers an opportunity to examine the books of the funding board.

J. H. MORTON, *Chairm.*

MARCH 17, 1885.

The funding board of Muhlenburgh county met at the office of J. H. Morton.

Present: J. H. Morton, chairman; Martin Kittinger, J. E. Mills, W. H. Whitaker, S. M. Weir, Wm. Young.

C. L. Morehead & J. W. & D. S. Green reported to the board that they had ready to be delivered to the board the old bonds
480 of Muhlenburgh county, amounting to one hundred and thirty-three thousand & four hundred dollars of the principal of said old bonds, together with coupons attached and certain other coupons belonging to bonds not yet offered to be funded, all of which, with the accrued interest thereon, amounts to the sum of $264,233.45.

It is ordered that J. H. Morton, chairman of this board, deliver to said J. W. & D. S. Green and C. L. Morehead the new bonds of Muhlenburgh county authorized to be issued by *by* the act of the General Assembly of Kentucky, approved March 18, 1878, in sum equal to thirty cents to the dollar of the amount due on said old bonds and coupons and accrued interest thereon.

It is further ordered that J. H. Morton, chairman of this board, cause to be issued the new bonds of Muhlenburgh county authorized to be issued by the act of — General Assembly of Kentucky, approved March 18, 1878, as fast as the old bonds of Muhlenburgh county, Kentucky, may be presented to be fund*ing to* the terms of the contract made by Jno. W. & D. S. Green & C. L. Morehead of date January 6, 1885. The amount to be issued — this order
481 shall not exceed seventy-five thousand dollars in addition to them already issued of the new bonds, said bonds to have coupons attached maturing July 1st, 1885, & every six months thereafter until the maturity of said bonds.

On motion, the above order was adopted by a unanimous vote.

No other business, the board adjourned.

J. H. MORTON, *Chair.*

APRIL 7, 1885.

The funding board met at the office of J. H. Morton.

Present: J. H. Morton, chair.; J. E. Mills, A. E. Newman, S. M. Weir, W. H. Whitaker.

Minutes of last meeting read and adopted unanimously.

There being no business before the board, they adjourned.

J. H. MORTON, *Chair.*

APRIL 21, 1885.

The funding board met at the office of J. H. Morton, county judge.

Present: J. H. Morton, chairman; J. E. Mills, Wm. Young, A. E. Newman, W. H. Whitaker, Martin Kittinger.

On motion, it is ordered that J. H. Morton, chairman of this board, deliver to J. W. & D. S. Green and C. L. Morehead the new bonds of Muhlenburgh county, authorized to be issued by the act of the General Assembly of Kentucky, approved March 18, 1878, in
482 a sum amounting to fifteen hundred dollars, with coupons attached maturing July 1, 1885, and every six months thereafter until maturity, said bonds to be credited by said J. W. & D. S. Green & C. L. Morehead on the amount due them for their services in funding the old bonded debt of Muhlenburgh county, Ky.

And it is further ordered that the consideration of the balance of the amount claimed by said J. W. & D. S. Green & C. L. Morehead be postponed until a future meeting of the board.

Said J. H. Morton is directed to take a receipt from said parties for the bonds so delivered by him to them.

The motion was adopted and the board adjourned.

J. H. MORTON, *Chairman.*

MAY 19, 1885.

At a meeting of the funding board of Muhlenburgh county on Tuesday, the 19 day of May, 1885, in the office of the county judge of said county, in Greenville, Kentucky.

Present: J. H. Morton, county judge & chairman; J. E. Mills, A. E. Newman, Wm. Young, W. H. Whitaker.

A. E. Newman offered a resolution, which is in words and figures following, to wit:

483 Resolved by the funding board of Muhlenburgh county in regular session in the office of the county judge of said county, That to pay the accrued and accruing interest on the bonds issued and to be issued under authority of an act entitled An act to authorize and empower the county of Muhlenburgh to compromise and fund its outstanding bonded indebtedness, issue bonds, and levy and collect taxes to pay the same, approved March 18, 1878, and to provide a sinking fund for the redemption or purchase of said bonds issued under said act, the county court of said county is hereby authorized and directed to levy a tax upon all the real and personal estate in said county, including all amounts given under the equalization law subject to taxation under the general laws of this Commonwealth. Said tax for the present year shall be one dollar on each one hundred dollars of said estate, including all amounts given in under the equalization law, whether shown by the assessment-rolls of 1885 or otherwise.

Said Newman moved the adoption of said resolution, which motion was seconded by J. E. Mills. The yeas and nays being taken on the motion, said resolution was adopted and passed by the following vote:

484 Yeas—A. E. Newman, J. E. Mills, W. H. Whitaker, and Wm. Young.

Nays—None.

On motion, it is ordered that said resolution be recorded and a certified copy be forwarded to the county court of Muhlenburgh county.

The board adjourned.

J. H. MORTON, *Chairman.*

JUNE 2, 1885.

At a meeting of the funding — of Muhlenburgh county on Tuesday, the 2nd day of June, 1885, in the office of J. H. Morton, county judge of said county, in Greenville, Ky.

Present: J. H. Morton, charm.; Martin Kittinger, S. M. Weir, W. H. Whitaker, & Wm. Young.

Minutes of last meeting read and approved.

There being — business before the board, they adjourned to meet on the first Tuesday in July.

J. H. MORTON, *Char.*

JULY 7, 1885.

The board — at the office of the county judge, J. H. Morton.

Present: J. H. Morton, chairman; Martin Kittinger, A. E. Newman, W. H. Whitaker, Wm. Young.

On motion, it is ordered that the chairman issue an order
485 on the treasurer of the funding board to pay the members of the funding board the amounts due them to date.

The board then adjourned.

J. H. MORTON, *Chairman.*

SEPT. 15, 1885.

The funding board met at the office of the county judge, J. H. Morton.

Present: J. H. Morton, chairman; J. E. Mills, Wm. Young, Martin Kittinger, W. H. Whitaker, & A. E. Newman.

The minutes of last meeting read and approved.

On motion, it is ordered that J. H. Morton be, and he is hereby, allowed fifty cents per day for his services in keeping the records of this board and two dollars per day as a member of the funding board, and the chairman is directed to draw, by order, on the treasurer of this board for said sum.

The board then adjourned to meet on the first Tuesday in October, 1885.

J. H. MORTON, *Chairman.*

STATE OF KENTUCKY,
County of Muhlenburgh.

I, Q. B. Coleman, county judge of Muhlenburgh county, certify that the foregoing is a true copy of the proceedings of the
486 funding board of Muhlenburgh county, created by an act of the General Assembly of Kentucky, approved March 18, 1878, from the meeting held on the first day of February, 1881, until the meeting held on the 15th day of September, 1885, inclusive, and which have never been reported by the county judge of Muhlenburgh county to the county clerk of said county for record.

Witness my hand this September 21, 1886.

Q. B. COLEMAN,
County Judge of Muhlenburgh County.

The deposition of JOHN H. MORTON, taken on behalf of complainants, is as follows:

Deposition of John H. Morton.

Question 1st by A. J. Keller, for complainants. State your name, age, residence, and occupation.

Answer. My name is John H. Morton; age, 61 years; reside in Greenville, Muhlenburgh county, Ky.; am an attorney of the law.

Question 2nd. State if at any time you have ever been elected and commissioned a justice of the peace for Muhlenburgh county. If you say you have, state for what district and what years you were so elected and commissioned.

487 Answer. I think it was in 1866 that I was appointed to fill a vacancy as a justice of the peace in district No. 2, commonly called Boggess, caused by the resignation of W. D. Lindsay. I was re-elected in May, 1867, and received my commission again in 1871 and again in 1875, and received my commission as a justice of the peace at all the times. I do not file my commissions herein, as the attorney for the respondents waive the production of them. I think it was about the 21st — 22nd of February, 1876, when I resigned as a justice of the peace.

Question 3. State if you have occupied any other public office in Muhlenburgh county since your resignation as a justice of the peace. If you say you have, state what office and when.

Answer. I was a notary of the public in said county for a number of years, and in 1882 I was elected and qualified as county judge of Muhlenburgh county and held the office until Sept., 1886.

Question 4. Look at Order Book No. 8, page 336, containing the records of the county court of Muhlenburgh county, and at an

488 order of which the following is a copy, omitting the erasures, namely: "Ordered that S. P. Love be, and he is hereby, appointed a — to have the bonds of Muhlenburgh county printed for $400,000 in the capital stock of the Elizabethtown & Paducah Railroad Co. in accordance with the order calling election to vote said amount if such bonds be necessary," the erased or cancelled words reading as follows, to wit: "commissioner on behalf of this county," and "and report to the court." Say whether or not that order or the matter thereof was called to the attention of the justices of the peace or whether or not the justices of the peace were called upon to act, either directly or indirectly, on the same by anybody. State whether or not the justices of the peace did make any appointment as set forth in said order or in any way act upon the same.

Answer. I have no knowledge of this order in any way, shape, form, or fashion, and never heard of it or knew anything of it until after this suit was instituted. I lived here in Greenville and gener-

489 ally attended all the courts held by the court of claims. On examining the record I see I was present on the day the order was made or alleged to be made, but the matter was never called to my attention, nor did I ever as a justice of the peace have anything to do with said order, and I have no recollection of any of the justices having anything to do with the said order on the said day.

Question 4. Your attention is called to the record of orders and all the transactions, so far as the said record shows, that transpired at a court commencing on Monday, the 30th day of November, 1868, and continued by various adjournments to December 1st, 1868, inclusive. State whether or not it appears that a great deal of busi-

ness was done at that term by the county judge with which the justices of the peace had nothing to do and to which their attention had not been called. State whether or not the same record shows that the business which properly belonged to and had to be dealt with by the justices was or not sufficient to occupy their attention at that term of the court, and also state what the custom or habit at those terms of the court — where the justices were in attendance to pass upon claims against the county and fix the *the* county
490 levy. State whether or not on such occasions the claims against the county were not left by the county judge to the justices of the peace for their action, and whether or not while the justices were acting upon these claims and fixing the county levy the county judge would entertain and act upon matters of business that belonged to his office.

Answer. To the first part of your question I will say "yes." I do not think there was business sufficient at that term of the court to occupy the entire attention of the justices during the whole term. Oftentimes while the justices and county judge were present to transact county business and act upon county claims and levies the county judge would transact business which belonged to his exclusive jurisdiction, but the justices would hold up on their business they were acting on until he got through. This was all in the same room. The justices of the peace usually passed upon the claims against the county. The county attorney would pass upon them first and then pass them over to the justices for their action, and the order authorizing the printing of the bonds was never sub-
491 mitted to the justices of the peace so far as I know of, and so far as I know they never made an order authorizing the printing of the bonds.

Question 5. I call your attention to the same Order Book No. 8, page 398, as to the proceedings of the county court held on the 30th day of August, 1869, in which the presence of divers justices of the peace is recited by an interlineation after the words "J. P." in said order book. Among these your name appears. State whether or not you were — at that said day.

Answer. I can't say now whether I was present or not.

Question 6. Examine the entire orders of that term and state what, if any, business was done that required the presence and attention of the justices of the peace. If there was any business state what it was.

Answer. I find the only business that required the presence of the justices was that of appointing some cadets to the State college at Lexington, Ky., and that of the report of Thos. Bruce, the county clerk; that he had on behalf of Muhlenburgh county subscribed 4,000 shares to *to* the Elizabethtown & Paducah Railroad Co.;
492 but I say this: I was at that time engaged in building a storehouse in Greenville, and on that day I was notified by some friends of Ira Bodine that they wanted me to come over to the courthouse and assist in the appointing of Bodine to the Agricultural College at Lexington, Ky. I was quite busy at the time, and told them when they wanted me to let me know. After awhile some one

notified me and I went over to the court-house in my working clothes; walked in and acted on the appointment of the cadets at once. I was informed then by the county clerk, Thos. Bruce, that he was through with me and I walked out. The last I heard as I walked out of the court-house was a wrangle over the will of Mrs. Ann Martin. The order about Bruce's report of subscribing 4,000 shares to the Elizabethtown and Paducah Railroad Co. on behalf of Muhlenburgh county was not made while I was present, nor was my attention or the attention of the justices while I was present called to the said order.

Question 7. You examined the minutes or orders of that day and term and have seen the interlineation of your name. Please
493 state why it is your name appears as being present at a justice of the peace during the proceedings of the whole term of that day.

Answer. I can't give any explanation, as the records show I was present during the whole term and during the transaction of the whole business, but I do say that I was present but a short time and only during the time that the appointment of the cadets was made. I did not know anything of the Bruce order showing that he had subscribed 4,000 shares to the railroad Co. on behalf of Muhlenburgh Co. until several years afterwards, and I went to see Mr. Bruce about it, and he remarked that he ought to have noted the retirement of the justices immediately after their action upon the appointment of cadets, but that he had failed to do so. This is about all that he would say about it.

Question 8. State whether you were present at a court of claims held in 1874, at its May term thereof, and whether you were called upon by the county judge to make a levy to pay the interest on the bonds in controversy in this suit, and also whether at that
494 same time the justices of the peace were called upon to take action in regard to bonds presented through H. B. Hancock, commissioner of the sinking fund. If you were present, then state all that transpired about this particular business inquired of.

Answer. I was summoned to appear at the May term, 1874. This was to attend to some business of county repairs on bridges, etc. This was a called court. I think all the justices of the county were present. About the first thing that was done was H. B. Hancock presenting to the court, composed of the county judge and justices of the peace, $3,000.00 in Muhlenburgh county bonds, which he as commissioner of the sinking fund had bought up and was now asking the court to receive and act upon. The vote was taken as to whether the $3,000.00 bonds should be received, and it was decided that the court should not receive them or recognize them in any way, all of the justices voting against the reception of the bonds except B. E. Pittman, who failed to vote, and the county judge votes to receive the bonds. County Judge Love then stated in a little talk to the justices that the impression had gone out that the jus-
495 tices had been called together to make a levy to pay the interest on the railroad bonds, and that as the impression had gone out he had now decided to submit to the justices the question

of making the levy. There was a great deal of excitement in the county over this question, and great many people had come to town that day. The court-house was very much crowded during the time this question was before the court. The question came up as to whether the justices should make the levy to pay the interest on the railroad bonds, but all the justices voted against making the levy, the county judge voting that we should make the levy. The question of subscribing stock or bonds to the railroad or making a levy to pay the interest on bonds or coupons of said railroad was never submitted to the justices of the peace, so far as I know of, prior to this time and occasion.

Question 9. Examine Record Book No. 8, page 419, November term, 1869, of the county court of Muhlenburgh county. Examine the orders as entered of record. State whether you were present at that term; and, if so, whether an appropriation was made to
496 pay the county court clerk, Thos. Bruce, $1,150.00 for signing the bonds issued to the E. & P. R. R. If you say you were present, state if you voted for it and why, and all the facts connected with it.

Answer. My recollection is that when the claim was first presented it was only for $650.00. It caused a good deal of jarring and wrangling, and Bruce withdrew it; but on the same day and at the same term M. D. Hay, Bruce's attorney, afterwards came before the court and presented Bruce's claim as for $1,150.00 for signing these bonds, and said that the first claim was for only a part of the work done by Bruce, and asked the court to make the allowance. There was a good deal of talk and argument over the question, and B. E. Pittman, who was then county attorney, made a talk to the justices, and told them that the claim was just and Bruce was entitled to it under the law, and that if they did not make the allowance that Bruce could compell them to do so by mandamus. The vote was taken and the allowance was made. My recollection is that myself, Joseph Adcock, and Taylor R. Clark voted againg making the allowance. I voted against it because I thought it was too
497 much and had seen the first bill of $650 and did not like the additional amount of $500 which had been brought in by M. D. Hay. I would have voted for the first account because the county attorney was in favor of it, and we were usually influenced by his advice.

Cross-examination by Attorney M. C. HAY, for respondents:

Question 1st. What time of the day was it when you went to the court-house on the 30th day of August, 1869, when you went to assist in having Ira Bodine & others appointed as cadets to the Agricultural College at Lexington?

Answer. I think it was in the forenoon, but what time I can't say.

No. 2. Did you remember before looking at the records that any other cadets were appointed by said court on said day except Ira Bodine? I mean do you now, independent of the records, recollect of the appointment of any said persons as cadets except Ira Bodine.

Answer. I do not.

No. 3. State how many elections have been held in Muhlen-
498 burgh county for commissioners of the funding board under the act of Legislature approved March 18th, 1878, entitled An act to authorize Muhlenburgh county to fund its outstanding indebtedness, issue bonds, &c., which act is generally known as the funding act.

Answer. I think there have been about 3 elections. One of these was held while I was county judge.

Further the deponent sayeth not.

J. H. MORTON.

It is agreed that the erasures appearing in the order made with reference to the printing of bonds at the November court of claims, 1868, were made after the adjournment of the court and before the minutes were signed, and that the erasures were made by Bruce, the clerk of the court at the time, at the court aforesaid.

M. C. HAY,
Attorney for Respondents.
T. W. BROWN,
For Pl'ffs (Compl'ts).

499 The deposition of S. P. LOVE, taken on behalf of respondents, is as follows, to wit:

Deposition of S. P. Love.

Question No. 1 by attorney for the respondents. State your name, age, residence, and occupation.

Answer. My name is Smoloff Palace Love. My age is 60 years. My residence is Greenville, Muhlenburgh county, Kentucky, and occupation that of a lawyer.

Question No. 2. State who was the judge of the county court of Muhlenburgh county on the 15th day of May, 1868.

Answer. I was.

No. 3. When were you first elected and commissioned as judge of said court and how long were you the judge of said court?

Answer. I was elected in August, 1866; entered upon the duties of said office under a commission about the 1st September, 1866, and in August, 1870, was re-elected to said office, commissioned, and entered upon the duties thereof about 1st September, 1870, and continued as such *as* until September, 1874.

No. 4. State how many justices of the peace there were in
500 commission in Muhlenburgh county on the 15th day of May, 1868, and give their names.

Answer. Twelve: Taylor R. Clarke, Joseph Adcock, John M. Williams, J. H. Morton, E. G. Neel, W. R. Carey, J. J. Wood, David B. Roll, H. G. Newman, S. J. Hunt, J. P. Hendricks, S. M. Eaton.

No. 5. If any of said parties are dead give their names, and if any of them live out of Muhlenburgh counties give their names and their present place of residence, if you know.

Answer. Taylor R. Clarke is dead. E. G. Neel and W. R. Carey have removed from the county. Neel lives somewhere in the State of Illinois, and Carey—I do not know where he lives now, but the last I knew of him he lived in Webster county, Kentucky. All the others are alive and live in this Muhlenburgh county, Ky. Clarke died before this action was brought, & Neel and Carey had removed from the county before then.

No. 6. Examine the order of the Muhlenburgh county court made at the special term of said county court held on the 15th day of May, 1868, by which order certain persons were appointed as officers to hold the election submitting to the voters of Muhlenburgh
501 county, Kentucky, on the 30th day of May, 1868, the proposition as to whether or not the county court should, for and on behalf of Muhlenburgh county, subscribe for and on behalf of said county for 4,000 shares—four hundred thousand dollars—of the capital stock of the Elizabethtown & Paducah — road Company and file herewith and make part of this deposition a certified copy of said order, and if any of said justices of the peace were by said order appointed as officers of said election tell their names.

Answer. I have examined said order and file a copy of said order as part of my answer to this question, marked "S. P. L.," and Joseph Adcock, John M. Williams, E. G. Neel, W. R. Carey, D. B. Roll, J. J. Wood, H. J. Newman, S. J. Hunt, and S. M. Eaton were justices of the peace for Muhlenburgh county at the time aforesaid, and were appointed as judges of said election to be held 30th May thereafter in their respective magisterial districts, as mentioned in said order.

No. 7. State who composed the board of examiners to compare the poll books and give certificates of election for the elections held in Muhlenburgh county, Kentucky, in the years 1867, 1868, and 1869.

502 Answer. The county judge, county clerk, and sheriff of said county. I was one of the county board.

No. 8. Tell how many votes were cast by the voters of Muhlenburgh county at the election held August, 1867, for the purpose of electing a member of the Legislature for said county. Tell how many votes were cast for persons who were candidates for the Legislature at said election. Tell how many votes were cast at the election held August, 1868, for sheriff for Muhlenburgh county, Kentucky; also tell how many votes were cast for candidates for the Legislature at the August election, 1869, for this county; also tell how many votes were cast at the August election, 1869, both for and against the proposition submitted to the voters of Kentucky as to whether or not an additional tax for common-school purposes should be assessed and collected, as was mentioned by an act of the Legislature of Ky.; also tell whether or not said elections were general or special elections.

Answer. I have no means of knowing the number of votes cast at the elections mentioned in the question except from
503 the poll books in the clerk's office certified by the officers of the election in each district. The corrected count of the supervisors cannot be found. Then I find from said poll books for August elec-

tion, 1867, when candidates were voted for in said county for senator and representative, there were cast 1,224 votes. Thus, for representative, M. D. Hay received 758 and T. J. Tinsly 466 votes; for senator, F. M. Allison rec'd 792 and Jas. Lands 334 votes. At the August election, 1868, for sheriff of said county there were cast, as shown by poll book, 1,622 votes—for Thos. M. Morgan 904 and J. K. Freeman 718 votes. At the August election, 1869, for representative and for and against the school tax there were cast as between the candidates for representative 1,222 votes—for representative, John B. Hays, 619; for Jonathan Clark, 603. For and against the school tax there were cast 1,247 votes—for the tax, 542; against the tax, 705 votes. All these elections were general elections.

No. 9. What notice had the people of Muhlenburgh county (other than the notices posted by the sheriff) in regard to the election held on 30th day of May, 1868, at which time the proposition as
504 to whether or not the Muhlenburgh county court should, for and on behalf of Muhlenburgh county, subscribe for 4,000 shares, four hundred thousand dollars, of the capital stock of the Elizabethtown & Paducah Railroad Company? Tell whether or not the question to be voted on at said election was prior to said election discussed or talked about by the people of the county; and if you should say it was discussed or talked about, then tell whether it was partially or generally discussed. Tell what you may know about these matters.

Answer. The question as to the vote for and against the railroad tax was, prior to the election, generally talked about among the people of the county. I was at that time at various parts of the county on county business, and I was often asked about the matter; gave my opinion on it; was met by opposition to my opinion. From what I could see and learn I think and believe it was generally well known. I have no recollection now of any public discussion of the proposition before the people, but I do remember that there was a general interest taken for the tax in Greenville, and some of
505 the citizens, Judge Ricketts and others, went into the county to advocate the voting of the tax.

No. 10. State what precincts or parts of the counties you visited between the time the said election was ordered and when it was held. Tell whether or not you saw or read any circulars in regard to the said elections; if so, tell in what part of the county you saw said circulars, and were the people advised by said circulars to vote for or against said proposition. What interest, if any, did J. B. Earle, of Hopkins county, and Sanders Eaves, of McLean county, take in said election?

Answer. I recollect of being at South Carrollton a time or two and once at Bremen, both of which are in civil district No. 1, and in each place I had conversations with various parties in regard to the proposition to the railroad tax. I have no distinct recollection of particular places at which notices of elections were posted, but I have that recollection of a general character of seeing such advertisements. I have no recollection of seeing or reading any circulars advocating the voting

of the railroad tax, but I do recollect seeing a printed circu-
506 lar that was addressed to the voters of the county against the proposition, and it was circulated in the Summers precinct, civil district No. 6, for this county, and it was generally believed to have been written by one J. B. Earl, of Madisonville, and I replied to it in print, but I afterwards learned he was not the author, and I set him right. I do not now know what part Mr. Sanders Eaves took in the matter, but I recollect that persons in Hopkins & McLean county, near the line of this county, took great interest in the matter in opposition to the tax, giving as a reason if the people of this county did not vote the tax the railroad would go by the way of Sacramento, in McLean county, and Madisonville, in Hopkins county, and would leave Greenville and Muhlenburgh county out of the way or line of the railroad.

No. 11. What business were you engaged in or what called you to the different parts of the county on the occasion above mentioned?

Answer. I was county judge and commissioner for the county to superintend county works and improvements and take a superintendance generally over county business.

No. 12. Did you or not make any report of said work or
507 what you had done or in regard to what you thought ought to be done in regard to the interests of the county? And, if so, then tell when you made, to whom you made it, and file a copy of said report herewith and mark it part of this deposition.

Answer. I did for several years, and at the court of claims in November, 1868, I made a written report to the court. I read it to the justices of the peace sitting as a court, and I have no recollection of seeing said paper since, until this morning I found it in a bundle marked "county court papers for the year 1868," and said paper or report is the original and in my handwriting, and I file a copy of said report as part of my deposition, marked "Love."

No. 13. State who was the sheriff of Muhlenburgh county on the 15th day of May, 1868, and state whether he is living or dead; and, if dead, state whether he died before or after the institution of this action.

Answer. William Irvin. He is dead; he died before this suit was instituted.

No. 14. Please look at Order Book No. 8, page 336, of the records of the Muhlenburgh county court, and tell what you know
508 about the following order, which appears on said book to have been made on the 1st day of December, 1868, as follows, and a copy of which is filed as exhibit with the pleadings in this action, viz: Ordered that S. P. Love be, and he is hereby, appointed a — to have the bonds of Muhlenburgh county printed for $400,000.00 in the capital stock of the Elizabethtown & Paducah Railroad Co., in accordance with the order calling election to vote said amount, if such bonds be necessary. Tell how came said order to be made. Was or not said order made by you while the county court was composed of the county judge alone or while said court was composed of the county judge and majority of justices of the peace of said county.

Answer. I have examined Order Book No. 8 and the order referred to. The court met, as I recollect, on Monday, November 30th, 1868, and continued over, and the order spoken of as appointing me commissioner to have the bonds printed was made on the 1st December, 1868. The order was agreed to and made by the justices of the peace of the county, then sitting as a court of claims, and, upon the suggestion of some member of the
509 court, the clerk took the minute and made up his order therefrom, is my recollection. There were at the time a majority of the justices of the peace then sitting as a court. I did not make the order, but — was made at the suggestion of some member of the court.

No. 15. Examine the proceedings of the Muhlenburgh county court held on the 25th day of May, 1874, as appears on pages 486 & 487 of said Order Book No. 9, tell what took place during the time said proceedings were had (which proceedings are the same that are incorporated in the deposition of W. T. Stiles in this action), and state whether or not on that occasion you said to the justices of the peace that heretofore you had been in the habit of making the levy yourself to pay the interest on these railroad bonds; that you thought perhaps your acts in this regard had been illegal, and that you wished the magistrates to *to* endorse what you had done and to go on with you and make another levy and subsequent levies, & that there had been some $3,000.00 worth of bonds redeemed and you wanted to know what disposition the magistrates would order made of
510 these bonds so redeemed, or words to that effect, and if not these tell what, if anything, you did say upon the subject of making said levy, and tell how long you talked—whether as much as a half hour or not.

Answer. I had called said court to make some appropriations for bridges and repairing bridges that had been washed away by recent floods. I had no intention of submitting any questions in regard to railroad matters or levies to be made, but a few days before the court was to convene I had learned that the impression had gone forth throughout the county I had called the court for the purpose of laying the levy to meet the coupon interest on the bonds, and at the advice of several of the prominent citizens and tax-payers I concluded to submit the question of levy. After the court convened and other matters of business was attended to I then called the attention of the justices of the peace to the fact of making a levy to meet the coupon interest for the current year beginning 1st March, 1874, and ending 1st March, 1875; that as that court perhaps would be the last court that I would sit with the justices and my term of office would expire before the regular court of claims and by the advice of some of the citizens
511 I had concluded to ask them to make the levy. I also advised them to make the levy, as I believed it would be cheaper to the county in the long run. A refusal to do so would open the United States court to the owners of bonds and the county would stand no chance in that court with a corporation. There was considerable confusion in the court by reason of persons jumping on

tables and benches; and Judge Thompson, an att'y of this place, made a lengthy speech to the court, or rather justices of the peace, urging them to refuse to levy. I made no speech to the court. I stated to them what I did say setting in the stand in the court-house in an ordinary business tone. I said I had heretofore made the levy to pay the interest myself, of which I had no doubt I had — under the law to do without their intervention, but as it was near the close of my official term I would submit the question to them. I never did say to the justices then assembled that I thought my acts in this regard were illegal, nor did — ask or express a wish to the magistrates assembled to endorse what I had done and go on with me and make another levy. I never at any time or court called upon
512 or asked any justice of the peace, individually or as a court, to endorse any act of mine in the premises whilst I was judge. At the same court Mr. F. B. Hancock, treasurer of the sinking fund board for the county, presented his books and asked for a settlement of the disbursements, and presented to the court, through me, a bundle of bonds which he said contained $3,000 in the county bonds and asked what should be done with them. The justices refused to have anything to do with them, and I then and there returned said bundle of bonds to Mr. Hancock. I do not think or believe my talk to the court on that occasion exceeded (20) twenty minutes.

No. 16. State whether or not on the occasion referred to in your last answer you or any member of the court said that the bondholders were not satisfied with the authority of the county judge to make a levy; also state whether or not B. E. Pittman said to you or to the court in your presence that he, Pittman, had told you when the first levy was made that you ought to have called the magistrates together and that you said, "No; I propose to take the bull
513 by the horns;" also state whether or not said B. E. Pittman ever at any time advised you that you ought to call the magistrates or justices of peace together to assist or be present when levies were made to pay coupons attached to the bonds of Muhlenburgh county issued in payment of the stock of the Elizabethtown and Paducah Rail- Company. State whether or not, either on that day or prior to that day, any agent of the holders or owners of Muhlenburgh county bonds had requested or suggested to you to call the justices of the peace together to be present or assist in levying a tax to pay the coupons or interest on the bonds before mentioned.

Answer. On the occasion referred to (the court in which the justices refused to make the levy) I never said to the court or any one else that the bondholders were not satisfied with the authority of the county judge to make a levy, nor did B. E. Pittman say to me or to the court in my hearing that he, Pittman, had told me when the first levy was made, nor at any other time, that I ought to have called the magistrates together and that I said No; nor did I say that "I proposed to take the bull by the horns" or any
514 other such expression to him or any one else, nor did B. E. Pittman or any one else ever at any time advise me that I ought to call the magistrates or justices of the peace together to as-

sist me or be present when said levies were made to pay coupons attached to the bonds of Muhlenburgh county issued in payment of the stock of the Elizabethtown and Paducah Railroad Company, nor ever at any time did any agent or agents of the holders or owners of such bonds requested or suggested to me to call the justices of the peace to be present or assist in levying a tax to pay the coupons or interest on said bonds.

No. 17. Did you know said B. E. Pittman? If so, is he living or dead? And, if you say you knew him, please state whether or not he is the same B. E. Pittman who was the county attorney for Muhlenburgh county, Ky., in the years 1867, 1868, & 1869, and state whether or not he is the same B. E. Pittman that was one of the justices of the peace for Muhlenburgh county, Ky., in the year 1874 & who was present and formed a part of the county court on occasion referred to before, when the justices refused to make the levy to pay interest on said bonds.

515 Answer. I was well acquainted with said B. E. Pittman. He was my law partner from Feb., 1866, until 1871 or two. He is dead. He was the same B. E. Pittman who was county attorney for this county in 1867, '8, & '9, and the same that was afterwards a justice of the peace for said county in the year 1874, and was present and took part in the county court on the occasion referred to.

No. 18. Did you or not, on the occasion referred to, viz., May term, 1874, when the justices of the peace refused to levy said tax, threaten or say that you would have a mandamus issued compelling said justices to levy said — or make any threat against them for refusing to levy said tax, or did you say anything on that occasion in regard to said mandamus except that you believed that they would be compelled by mandamus to levy said tax if they refused to levy, and that you advised them to levy the *the* tax? If so, tell what it was.

Answer. I did not at the court mentioned or any other time make any threats to the court nor threaten them that I would have
516 a mandamus issued compelling the justices to levy said tax nor make any threat against them for refusing to levy said tax. All I said on that occasion to the justices was before they refused to make the levy, and then said to them that I thought it would be best for them to make the levy, and, if they refused, that they or the court might or probably would be compelled by mandamus to make said levy. I certainly did not say anything to the court after they refused to make the levy. I did, as stated above, and for the reason given, advise them to make the levy.

No. 19. Now, is it or not a fact that said justices of the peace afterwards had to resign to escape being compelled by mandamus to levy tax to pay interest on said bonds?

Answer. The justices of the peace who were in commission at that time did resign afterwards, but of my own knowledge I do not know what impelled them to such step; but it has always been my information that they resigned to escape the mandamus.

No. 20. Please examine the certificate of the officers, viz.,
517 S. P. Love, county judge, and Thos. Bruce, county clerk, certifying the result of the election held on the 30th day of May,

1868, at which time the proposition was submitted to the voters of Muhlenburgh county, Kentucky, on the question as to whether or not the Muhlenburgh county court should for and on behalf of Muhlenburgh county subscribe for 4,000 shares, four hundred thousand dollars, of the capital stock of the Elizabethtown & Paducah Railroad Company, and also a copy of the order recording said certificate, and also directing that said subscription be made, and file herewith and make part of this deposition a copy of said order and certificate, and say whether or not you made said order or not, and if you say you did, then state whether or not you would have made the statement contained in said order in regard to said election, the act under which it was held, and that said election had been duly advertised and had — held and conducted in all respects as required by the act entitled An act to amend the charter of the Elizabethtown & Paducah Railroad Company, approved February 28, 1868, as set forth in said order, if you had not then been satisfied
518 that said statements were true, and state what is your present recollection as to matters embraced by said statements.

Answer. I have examined the order an- certificate embraced by the question. It is found in Order Book No. 8 of the Muhlenburgh county court, page- 299 & 300, and I here file a copy of said order & certificate herewith as part of my answer, marked "order 1." I made that order. I would not have made said order or the statements made therein unless the election had been duly advertised, held, and conducted in all respects as required by the act and amended act of the charter of said Elizabethtown and Paducah Railroad Company, nor would I have made said order had I not been satisfied that said statements were true, and my present recollection is that I investigated whether or not the law as embraced in said charter of said railroad had been litterally and in every particular complied with, and in fact I often had the assistance of F. M. Allison, an experienced clerk and a lawyer at Greenville, to assist in draughting the orders in regard thereto. Said Allison is now dead.

519 No. 21. State who was the sheriff of Muhlenburgh county on the 15th day of May, 1868, whose duty it was by law to have given the notice of said election required under the said act amending said charter of the Elizabethtown & Paducah Railroad Company, and state how long you knew him and what your opportunities were for knowing the manner — which he conducted his official business, and state whether or not he is living or dead.

Answer. William Irvin was sheriff at the time, and it was his duty to give the notices of said election as required by the law. I had known Mr. Irvin from the year 1849 until his death; had frequent business transactions personally and official business nearly every day with him whilst he was sheriff. He was sheriff from 1st day January, 1867, until 1st day of January, 1869. He was a good business man. He was conscientious, prompt, correct, careful, and firm in the discharge of official business. He is dead; has been dead about 3 years.

—. Please examine the poll books of said election held on the 30th

day of May, 1868, as before stated, and tell how T. R. Clark
520 (the justice who you say is dead) and W. R. Cary and E. G. Neel, the justices who you say live out of the State; also Thomas Bruce, who was clerk of the Muhlenburgh county court from 1866 to 1874 (the same Thos. Bruce whose name appears to the certificate of election before referred to), and said Wm. Irvin, who was then sheriff, voted at said election held on the 30th day of May, 1868.

Answer. I have examined the original poll books of said election. I find on the poll books of district No.1, in said county, *and* Taylor R. Clark's name recorded against the subscription to the stock of said railroad. I find on poll book of district No. 3, Court-House, E. G. Neel & W. R. Cary's names recorded for the subscription to said stock. I find Wm. Irvin's name on said poll book recorded against said subscription. I also find on the poll book of district No. 2 that Thos. Bruce's name is therein recorded against said subscription. I also find that in district No. 3 from the poll book there was 298 votes cast at said election and only one—that of the sheriff, Wm. Irvin—cast against the subscription. About one-half of the town of
521 Greenville is embraced in district No. 3 and about one-half of said town is embraced in district No. 2. Our No. 3 is called the Court-House; the No. 2 is called the Boggess precincts. The main cross-street in said town is the line between the two districts aforesaid.

No. 22. State what were your opportunities for knowing how said election was held and conducted on the said 30th day of May, 1868.

Answer. I can only answer as to the two precincts in Greenville, where I live, Nos. 3 & 2. Everything was quiet, and the election was conducted, as I thought, fairly, and all persons voted that desired to do so without hinderance. I cannot now say whether I visited the polls or place of voting after that day, but I was then and am now in the habit of going there during any elections that are held.

No. 23. If there was anything unfair, unjust, & fraudulent or oppression in the manner of holding or conducting said election or in any regard thereto, did you then know it? And, if you ever heard of it, tell when you heard it first—heard of it.

522 Answer. There was nothing unfair that I know of or ever heard of it, nor have I ever to this time heard of any unfairness in said election or the manner of conducting it, nor did I ever at any time know or hear of any unjust, fraudulent, or oppressive acts in regard thereto by any one.

No. 24. How long have you lived in Muhlenburgh county, Kentucky, and what opportunities have you had for knowing Muhlenburgh county and the people of said county?

Answer. I have lived in said county from the 1st day of April, 1849, until now. I was engaged in school-teaching from about May, 1849, until August, 1859. After that was a merchant at South Carrollton, in district No. 1, until the war broke out, or rather until Sept., 1861, when I became lt. col. of the 11th Regiment Ky. Volunteers, Federal Arm-; recruited 3 full companies from this county and parts of 3 others. In 1865 was a candidate for the sen-

ate from the senatorial district in which this county is embraced; in 1866 & 1870 a candidate for county judge, and in each year that I was a candidate I canvassed said county closely, and have lived since Feb., 1866, at and near Greenville and engaged in the
523 practice of law. I have an extensive acquaintance with the people of said county, and would say acquainted with ⅔ of the vote-s of the county; have been all over the county and acquainted in every neighborhood more or less.

No. 25. From your knowledge of Muhlenburgh county and the people of said county state whether or not, in May, 1868, ten days' notice was sufficient to allow the tax-payer to know that the election was to be held and to give him time to take counsel and advise himself as to his interest.

Answer. Under the circumstances, and the matter having for weeks been expected, the time was sufficient.

No. 26. What person connected with the management of the Elizabethtown & Paducah Railroad Co., other than S. B. Thomas, made speeches or took any part in trying to get the people of Muhlenburgh county to vote for said subscription at said election held on 30th day of May, 1868?

Answer. None.

Question 27. How many speeches did Sam'l B. Thomas make in the county in behalf of said subscription?

524 Answer. I heard him make one, and that is all he made that I know anything about.

No. 28. Who were the commissioners of the board of sinking fund for Muhlenburgh county, Kentucky, in the year 1874 & from that time until the railroad was sold?

Answer. I remember that F. B. Hancock, Samuel E. Smith, and M. C. Hay were when I went out of office in 1874. Sam'l E. Smith removed from here to Evansville, Indiana, and died there. His place has not been filled that I know of, nor has there ever been any other appointed since I went out of office as county judge. F. B. Hancock resides at Elkton, Todd county, Ky.; M. C. Hay at Greenville, this county.

No. 29. State whether or not any certificate of stock was issued to Muhlenburgh county by the Elizabethtown & Paducah Railroad Company for the 4,000 shares, four hundred thousand dollars, of capital stock of said company subscribed for by the Muhlenburgh county court for — on behalf of *the* Muhlenburgh county. If you say that there was, tell to whom said certificate of stock was
525 delivered by the said Elizabethtown & Paducah Railroad Company and what became of said certificate; tell where it is now—in whose possession is said certificate now.

Answer. When I finished delivering the bonds of the county to said railroad company a certificate was delivered to me by the secretary, A. A. Gordon, for the 4,000 shares of the capital stock of said company to this Muhlenburgh county; said certificate was by me delivered to the treasurer of the board of commissioners of the sinking fund of the county. F. B. Hancock was the treasurer of said board at that time and it was to him I delivered said certificate of

stock. I have before me the certificate, which I recognize as the same. In whose custody it now is I do not know. I have never seen it from the time I delivered it to said treasurer until now. It is now in the possession of M. C. Hay, one of the members of said board and the only one that resides in Muhlenburgh county. Said certificate is number 3 and dated November 26th, 1869, and signed by A. A. Gordon, secretary, and Sam'l B. Thomas, president, and I recognize the signature of the secretary, A. A. Gordon, as
526 genuine. I do not file a copy of said certificate, because counsel agree that it is the certificate, and a copy of it is correctly set forth in respondant's answer.

No. 30. In your report made to the levy court or court of claims held November, 1868, a copy of which report is filed as part of this deposition, you say that you all know we voted the tax, or words to that effect, & that the railroad company is demanding the bonds. Now what tax did you mean or refer to then?

Answer. The four hundred thousand dollars asked by the order submitting to the voters of the county whether or not said county should subscribe for and on behalf of the county for 4,000 shares of the capital stock of said railroad company and the bonds had not been printed, nor no order made for their printing.

No. 31. What bonds and election do you understand was meant by the order mentioned by you in your answer to question No. 14 of this deposition? I mean the order purporting to have been made by the levy or court of claims on the 1st day of December, 1868?

Answer. It was the bonds of the county, and mean the
527 election held on 30th May, 1868, on the question of the subscription of the stock in aid of said railroad company.

No. 32. State whether or not you were a member of the Muhlenburgh county court at the November term, 1869, held on the 1st day of December, 1869, when an account in favor of Thos. Bruce was presented, which account is in words and figures as follows, viz:

Muhlenburgh county court to Thos. Bruce, Dr.

To signing and sealing 2,300 E. & P. R. R. bonds, @ 50 each; amount $1,150 00

And also were you present when an allowance was made by said court to said Bruce at said term as follows, viz:

Amount for Thos. Bruce for seals on E. & P. R. R. bonds.. $1,150 00

If you say you were, then tell what bonds were referred to in said account and order.

Answer. I was the presiding judge of the Muhlenburgh county court at the time. I was present, and the bonds referred to are the same that are in controversy in this suit.

No. 33. What attorney, if any, presented said claim for said
528 Bruce? Who put or called for the vote upon the order of said court making said allowance to said Bruce? State whether or not you voted on the question of making said allowance to said Bruce. State whether or not all the justices of the peace then

present voted on said questions; and, if you remember, tell how a majority of them voted, whether for or against making said appropriation or allowance. Did you or not tell said justices of the peace on that occasion that if said claim was not allowed to said Bruce that they would be compelled by mandamus to make it, or anything of that kind?

Answer. M. D. Hay, an att'y-at-law and who resided in Greenville, Ky., at the time, presented Mr. Bruce's account to the court and in a speech to the court advocated its allowance. M. D. Hay is now dead. There was no call for a vote, but I, as presiding judge of said court (as was my universal rule), put the vote to the court on that occasion. There was a majority of the justices present and there was a majority of them voted to make the allowance to Mr. Bruce, and I announced it carried in the presence of the court. I do not remember now that all of them voted on the question,
529 but I do know that a majority of them voted for the allowance. I did not vote on the proposition. I remember well that the question was discussed among the members of the court, and I distinctly remember that Esquire J. M. Vick remarked to the court "that it was due Mr. Bruce, and that the county would have it to pay and the court had as well make the allowance," and this was before the vote was taken. I did not take any hand in the matter more than I have stated, nor did I tell said justices of the peace on that occasion or any other if Mr. Bruce's claim was not allowed they would be compelled by mandamus or in any other way to make the allowance, nor did I say anything of the kind.

No. 34. What bonded indebtedness or debt evidenced by bonds has the said Muhlenburgh county or has it ever had other than the $400,000.00 bonds issued by the Muhlenburgh county court in payment for the subscription of the said county for the 4,000 shares of the stock of the Elizabethtown & Paducah Railroad *county* and the bonds issued by Muhlenburgh county under the act of the Legis-
530 lature of Kentucky approved March 18, 1878, commonly known as the funding act?

Answer. None, nor never had that I ever heard.

No. 35. What was the assessed value of the property subject to taxation under the general laws of Kentucky in the year 1869? What was it in the year 1874? What sum on each $100.00 worth of property was levied by the Muhlenburgh county court (while composed of the county judge alone) for the year of 1869 to pay the coupons or interest on the bonds of Muhlenburgh county delivered to Elizabethtown & Paducah Railroad Company as before stated?

Answer. I have just added up the value colum-s of the assessor's book for the county for the year 1869, and I make the total value of the property for that year $2,424,446.00, and I find from said books for the year 1874 it to be $2,330,562.00. Said assessor's books are now on file in the county court clerk's office, in Greenville, the county-seat. The levy made by me for the year 1869 was one dollar 30 cents on each one hundred dollars of taxable property of the county as shown by the assessor's books for 1869.

531 No. 36. State whether or not the value of the Elizabethtown & Paducah railroad and the Owensboro' & Russellville railroad was included in *the* either of said sums mentioned by you in your last answer.

Answer. They were not.

No. 37. State who was the member of the house of representatives and the senate of the Legislature of Kentucky & who attended the session of 1867–1878 as members from Muhlenburgh county. Tell where they lived during the month of May, 1868, & whether or not they are now living or dead.

Answer. M. D. Hay was representative and F. M. Allison senator. They both lived in Greenville, Ky., in May, 1868, and are now dece'd. F. M. Allison is the same who often assisted me in making orders of court heretofore spoken of by me.

No. 38. What examinations, if any, have you made of the depositions heretofore taken in this case. State whether or not you have been present at the examination of the witness- who have given their depositions in this cause.

532 Answer. I have not been present at the taking of any of the depositions; only passed in and out of the clerk's office here on business when they were taking them; have not heard a single question propounded by att'y or answered by other witnesses, nor have I read any of the questions or answers of other witnesses, but have heard occasional questions and answers of other witnesses read by counsel during my examination.

Cross-examination:

Question 1st. State in whose handwriting the order presented to the court for entry as to the election for subscription of stock to the Elizabethtown and Paducah Railroad Co. is; and is it not a fact that the said order was prepared by some one representing the board of directors of the Elizabethtown and Paducah Railroad Company? State further whether or not the said order was brought into court by the president or attorney or some officer of the said company. State whether or not you inspected said order at all; whether

533 there was any one there opposing said order. Likewise state whether or not before you convened your court the president of said company or the attorney or any officer thereof had approached you about this order or said anything to you about it, and whether or not you had previously given your consent to them to enter said order.

Answer. I do not know whose handwriting said order is. I will here state that I was applied to by Sam'l B. Thomas, the president of said railroad company, to hold a court for the purpose of making the necessary orders to call the election. I went to the court-house, in Greenville; had the bell of the court-house rung and court regularly opened, and, on motion of, as I now recollect, H. C. Prudell, att'y for the road, and who presented the order written out, it was entered on the order book of the court. I did not examine and look over said order before it was entered of record. There was no one

present opposing said order. No one had approached me about said order. All that was said to me they desired a court called to make necessary orders for the election; nor had I at any time previously given my consent to enter same or any other order in the matter.

534 Question No. 2. You say that you examined the order prepared by the company and presented by its attorney before you had it entered. State why you made an inspection or examination of the order. Was it read in open court before you inspected it?

Answer. I cannot give any reason why I inspected said order more than I was always in the habit of reading all orders presented or entered on the record before I signed the record as judge of the court. I recollect that the order was in the hands of the att'y when he made the motion; but whether he read it out to the court or not I cannot say.

Question No. 3. Then I understand, from the tenor of your last answer, your inspection or examination of the order was made after the clerk had entered it and before you had signed it. Please also state, for full information on this point, whether the said order had been read to you by any one for the said company before you went on the bench.

535 Answer. You do not understand me aright. I read the order in the court-house whilst I was on the bench. I also, before I signed the order book, saw by comparison that it was correctly entered. Said order never had been read to me by any one before I went on the bench as judge at said court.

Question 4. Look at the minute book of May 15th, 1868, and see if there is a minute of said order.

Answer. So far as I can find there is none. I find a minute of May 15th, 1868. This minute is "Jonathan Shut admitted to deputy clerk;" it is in the handwriting of Thos. Bruce, who was then clerk. I see no other minute of that date.

Question 5. Was it not the habit of the clerk to make a minute during its session of what had been done and then afterwards enter it at large upon the order book for you as county judge to sign? If you say it was how do — account for the fact that the clerk made no minute of this very important transaction?

Answer. No; not always; he sometimes did at call courts, as this was. The order made was entered at once on the order book. At regular county courts it was the clerk's custom and habits to

536 make minutes and afterwards enter them on the records, and I would read over the orders to see they were correct & then alter or, if correct, sign them. On the occasion of this court the clerk entered the order on the book from that presented to the court. I read it, saw it was correct, and signed the order in the court-house before the court adjourned.

Question 6. You have stated that you inspected the order when presented in court for action. Now, please state whether before inspection you knew the general tenor of the order; also state what particular matter or feature of the order, if there was any, that induced this inspection by you. I mean by this what was there that you especially looked after to see that should be in that said order.

Answer. I did not know the general tenor of the order. I only knew that a court was asked to make an order for the election, as before stated. There was no particular feature or matter that induced an inspection by me. I only desired to see that it was in accordance with the law as embraced in the charter, which was then present in pamphlet form, and it was read whilst I examined
537 the order as written out.

Question 7. You speak of the charter being then present in pamphlet form. Do you mean the entire charter of the company, including the original act of incorporation and the subsequent amendments thereof, or do you mean that a late amending act was presented?

Answer. I mean it contained the original and amended act submitting the proposition to the voters of the county. If I recollect aright, the original act authorised the county judge to make the subscription on the petition of a majority of the voters of the county.

Question 8. Please look at the original act incorporating the company and see if you are mistaken in supposing that it authorized or provided for a subscription of stock by the county.

Answer. I expect I am mistaken in saying the original act authorized the subscription of stock on petition. I have examined the original charter and find it does not contain it, but there was in said pamphlet charter such a provision and also a provision submitting it to a vote upon application of the company in one of the
538 amendments.

Question 9. The amendment to the original act contained a provision authorizing the county court to make a subscription on a petition of the majority of voters, did it not?

Answer. That is my recollection.

Question 10. When this order was presented to you for action this amendment to the charter was present before you and in your mind at the time, was it not?

Answer. It was before me, and I suppose I was thinking of the matter.

Question 11. When did you see that pamphlet?

Answer. At the time the court was held and during the motion then made. I retained the pamphlet and have it now somewhere in my office among my papers. Since the commencement of taking these depositions I have looked for it, but cannot find it. I got it from some one of the railroad representatives then present, but cannot state which one.

Question 12. Was there any other pamphlet copy of the Legislative acts which you say was presented to you by the
539 representatives or agents of the Elizabethtown and Paducah Railroad Co. in the possession of any one else in the county, and was there any such pamphlet copy circulated among the people of the said county previous to the said election?

Answer. I do not remember whether or not at that time or before that there were, but I saw many of them afterwards and before the election, as I now best remember.

Question 13. Please name some individuals other than yourself

in whose hand you saw any pamphlet copies such as presented to you by the railroad company at the time the said order of election was asked.

Answer. Judge Joseph Ricketts, an att'y-at-law, who then lived at Greenville and with whom they were left. I cannot now remember any one else that had any of them.

Question 14. Was or not this said Joseph Rickets either in the employ of the said railroad company for and on behalf of the procurement of the subscription by the people or, if not so employed, was he not a zealous partizan and champion of the said company in the procurement of the said subscription?

540 Answer. He was present at the court held on the 15th May, 1868, at the time the order was made calling the election, acting as the att'y for said railroad company; said Rickets was zealous advocate for the subscription for and on behalf of the county to said capital stock of said railroad company.

Question 15. Are you aware that the said Ricketts or any one else made any distribution of these said pamphlet copies among the people of the county? Were any of them given to the magistrates, or rather the justices, of the county or placed in the clerk's office of the county for inspection by the people before the said election?

Answer. Not that I have any personal knowledge of.

Question 16. When you were asked to order the election by the agents of the Elizabethtown and Paducah Railroad Company was any suggestion made to you by any one or did it occur to you that an election to make a subscription of $400,000.00 could not be made by a county court except one composed of yourself and a majority of the justices of the peace of the

541 county? If you say that it was neither suggested to you, nor that it did not occur to you in this wise, state how it was that it appeared to you that you had the power to order the election to charge the county so large and involving necessarily and collaterally appropriations beyond what the law, as it then stood, allowed the county judge to make. Say whether or not there had been any decision by the appel-ate court of Kentucky at that time intimating that the county judge could under any circumstances order an election without the presence of a majority of the justices of the peace for a subscription over and above the amount the county judge could by law by himself appr-iate when the term "county court" was used.

This question and the answer thereto objected to by attorney, M. C. Hay, for respondents.

W. A. WICKLIFFE, *Examiner.*

Answer. No suggestions were made to me nor did it occur to me at the time that it could not be done except the county court was composed of myself and a majority of the justices of the peace of the county. The second section amending the charter of the Elizabethtown and Paducah Railroad Company, found in the Acts

542 of the General Assembly, Ky., 1867–'8, vol. 1, page 632, approved Feb. 24th, 1868, I find "that whenever the said Eliza-

bethtown and Paducah Railroad Company shall request the county court of any county through or adjacent to which it is proposed to construct said road to subscribe," &c., &c. I construed the words "county court" in that section to mean the county judge when sitting as a court. There had been no occasion then that I know of that authorized the county judge to order an election without the presence of a majority of the justices of the peace for a subscription over and above the amount the county judge could by law by himself appropriate. I did not then nor do I now understand that I was making an appropriation. I knew then and I know now that I could not make an appropriation exceeding $50 at any one court. If the question embraces whether or not the question at said court was raised whether or not I, sitting as a court, had the power to order the election, there was an informal talk at the time by those present as to my authority to so order the election, and from what was then said and my own interpretation of the section aforesaid I was satisfied I had the authority to so order said election. I do not now remember who were present. There were several that—H. C. Pindell, att'y for corporation; Judge Ricketts, Sam'l B. Thomas, Thos. Bruce, clerk of the court, and myself.

543

Question 17. On the occasion and in connection with the matter you have just spoken of in your preceding answer was there any person learned in the law present and participating in the questions brought up other than the attorneys for the railroad company of whom you sought or from whom you received any suggestions as to your power in the premises? If you say there was, state who, and further state whether you asked counsel of any one in this matter and were you not at that time a licensed and practicing attorney of the bar of your county.

Answer. No one; nor did I ask or receive instructions from the railroad att'ys. They made the motion — presented the law upon which their motion was made. I examined it and acted upon my own construction of it. I asked no counsel of any one in this matter only as stated. I was a practitioner at the bar in the county.

544

Question 18. Please look again at the act to which you have referred in answer to cross-interrogatory 16 and compare sections 2, 3, 4, & 5, treating of the submission of an election for subscription by the county court, with sections 6 and 7, which treat of subscriptions made by cities and towns, and say whether or not by the provisions of those acts, although the mayor or clerks of the towns or cities or the chairmen of the board of trustees, as the case may be, can make the subscription, yet the application for subscription must be made to the town or city council or trustees and the election ordered by them. If you find the sections 6 & 7 to express themselves as substantially here stated, state why it was, in view of those sections, it did not occur to you that the same guards were intended for the protection of the county that was provided for the protection of cities and towns—that is, by calling in, so far as the county was concerned, the justices of the peace, who occupied precisely the same

relations relatively to the people of the county as trustees of
545 towns or members of a city council occupied to the people of these municipalities.

This question and answer thereto objected to by attorney for respondents.

W. A. WICKLIFFE, *Examiner.*

Answer. I answer that in sections 2, 3, 4, & 5 of said act when the words "county court" occur there is not mentioned justices of the peace, whereas in sections 6 & 7 where the words "city council," "board of trustees," are mentioned I construed "county court" to mean county judge sitting as a court, and the order- were spoken of collectively.

Question 19. Is it not a fact that when the county judge and justices of the peace sit together that such an assembly is as completely and truly the county court as when the county judge sets alone, and is it not so styled in the act and so recognized and named in the decisions of the appel-ate court of Ky.?

This question and answer thereto objected to by attorney for respondents.

W. A. WICKLIFFE, *Examiner.*

546 Answer. Yes; for the purposes for which it assembled. As to the act, it speaks for itself. Lawyers differ in this regard; and as it *being* the decissions of the appel-ate court of Ky., those decissions speak for themselves.

Question 20. At the time of this transaction had the Legislature of Ky. passed any act where matters that were to be done by the court composed of the county judge and the justices of the peace used the term "justices of the peace" in requiring them to be present when the county court acted, and whether or not in any act pertaining to matters to be transacted by the county court, composed of the justices of the peace and the county judge, any other term or expression was used than "county court"? Now, I do not mean by this such acts of the Legislature as created the county court or defined its duties or its constituent parts in regard to the general and ordinary business of the county to be transacted by a court composed of the county judge and the justices of the peace, but
547 I allude exclusively to acts of the Legislature submitting special matters to the county court, such as subscriptions to railroad and other corporate enterprises.

Answer. The Revised Statutes of Kentucky, which was then in force, under the head of courts, art. XXI, page 328, sec. 2, says a "county court shall be held in each county at the seat of justice by the presiding judge of the court on the days prescribed by law;" but at the court of claims, &c., of each year the justices of the peace of the county shall set with the presiding judge and constitute the court (sec. 3). Sec. 4 says, "But the justices of the peace shall only compose a part of the court when it is engaged in laying the county levy and in appropriating money and in transacting other financial

business of the county." This is and was all the law that I know of that at any court—which requiredt he justices of the peace to be associated with the county judge, nor do I know of any act that mentioned when speaking of the county court that mentioned justices of the peace other than above stated, nor do I know of the mention of the justices of the peace to be associated with the county
548 judge in matters of railroad subscriptions or other corporations at that time or since.

Question 21. Look at the act approved March the 9th, 1867, entitled "An act to amend an act incorporating the Elizabethtown & Paducah Railroad Company," and say whether you would construed county court used in said act in the limited sense in which you construed it under the act of 1868, to which you have a little while back referred, and would you under that act have felt yourself authorized to order the election without associating the justices of the peace of the county with you.

Answer. I would in calling an election to vote on the proposition and would have felt authorized to so order the election without the intervention of the justices of the peace in calling the election or any other matter connected with it under the amended act approved March 4th, 1867. I was acting *acting* under the original and amended acts of said charter and considered that I had a right to do and so ordered under all the acts authorizing a subscription for and on behalf of the county.

549 Question 22. When did the president, Sam'l Thomas, make a speech and where, as regards this railroad, to the people?

Answer. I cannot now state, but it was at a county-court day, I think, but whether it was before or after the election—I believe, though, it was before, because I remember some, as I thought, extravagant assertions he used in his speech in regard to the ease with which the people could pay the debt.

Question 23. State whether or not there were a good many people present at the time the said Thomas made his railroad speech. And was not the speech made prior to the entry of this order which was made on the 15th day of May, 1868?

Answer. There were a good crowd in town that day, and I remember the speech was discussed among the people that day. The speech, I think, was made after the entry of the order for the election. Our county court was, as it always is, held on the last Monday in each month.

550 Question 24. You state, in answer to question 9 in your examination-in-chief, that "the question as to the vote for and against the subscription was, prior to the election, generally talked about among the people of the county. I was at that time at various parts of the county on county business, and I was often asked about the matter." Was this visitation of yours through the county after a 10-days' notice of the election had been given or before, or was it after the order made by you directing the election?

Answer. Before and after.

Question 25. How much of the county did you see, either after

the entry of the order of election or after the 10 days' notice prescribed by the said order?

Answer. I cannot now state, but I expressly remember of being at Bremen and South Carrollton, both in distrtct No. 1, and talking with persons there in regard to the vote after the order was made. I have no memory of any other places I visited in the county after the order was made.

551 Question 26. Did you tell the people of Bremen and South Carrollton of the amendment to the act of 1868 incorporating the Elizabethtown and Paducah Railroad Company, or inform them as to the provisions thereof, and is it not a fact that the people of Bremen and South Carrollton voted almost unanimously at said election against the subscription, and is or not this a populous voting precinct?

Answer. I have no memory of informing them or anybody else of the provisions of said law or the amendments thereto. The poll books will show the vote. I speak from recollection that there were not more than 40 votes cast in said district for the subscription. At that time there were somewhere about 500 votes in the district. I lived in it from April, 1849, to Feb., 1866, and was acquainted with nearly every voter in said district. It was the most populous district in the county excepting district No. 3 (Boggess) and district No. 3 (Court-House).

Question 27. Was there ever any petition gotten up by the people of the county, addressed to the county court, asking the county court to make a subscription to the said railroad company? If so, state

552 when said petition was gotten up, what number of voters signed it, what became of it, why it was not acted upon, & state all you know about it if you know anything at all about it.

Answer. There were many of them circulated in the county. Immediately after the passage of the amendment to the charter March 9th, 1867, was passed there were a number of petitions written and the county canvassed, and a great number of petitioners signed them. They were *more* presented to me as a court. Many of those petitions were afterwards given to me, not as a court, and with few exceptions I have them somewhere among my papers in my office. Some of them I know are gone. I mean that after the petitions were gotten up it was concluded to *concluded to* submit the proposition to a vote of the county and the petitions were given to me and I tried to preserve them.

Question 28. You state in your last answer that it was concluded after the passage of the act of 1868 to submit it to a vote of the people. By whom was this conclusion arrived at and upon whose instance was it acted on?

553 Answer. I remember no one in particular but myself and one or two others of the friend-of the enterprise in Greenville. I remember to have said to Judge Ricketts that it would give better satisfaction to the people of the county and requested him to inform the railroad parties. He afterwards informed me that he did and that they agreed to it. I remember that I said I would refuse

to make the subscriptions on the petitions, and that I would advise Thos. Bruce, the clerk whose duty under the charter it was to make the subscription, not to subscribe the stock on the petitions. I was in favor of the subscription of $300,000.00, the first am't which we were, as I understood—would be called upon to vote, but when they asked for $400,000.00 my ardor for it was considerably cooled down, and I hesitated about calling the election. I never advocated said proposition by speeches. I only voted for it.

Question 29. When was this conclusion arrived at of which you have spoken in the preceding answer?

Answer. It was after the petitions were sent out and before the order for the election. I cannot say how long before.

554 Question 30. Say whether it was before or after the passage of the amendment of February 24, 1868.

Answer. My recollection — the petitions were circulated before and after that time, and the conclusion to submit to a vote was after the passage of said amendment, and I only say this because the agents of the railroad company in May asked for the submission and it was on my suggestion to Judge Ricketts, and my recollection is that Mr. Thomas & H. C. Pindell came to Greenville a very short time after I had informed Judge Ricketts that the people would be better satisfied to have a vote on the proposition and made the application for the election, as I ordered at the court of May 15, 1868.

Question 31. Does not the act approved March 9th, 1867, provide for a subscription by an election as well as by petition?

Answer. It does.

Question 32. At the time of the conclusion you speak of as arrived at not to act on the petitions that had been sent up did you know anything about the act of Feb. 24th, 1868, or that such act had

555 been passed or anything about its conditions? Had you seen any copy of it at that time and did Mr. Ricketts or the persons that you consulted with have any knowledge of said act at that time?

Answer. I suppose I did. I do not know now that I did. I cannot now say that I had ever seen a copy of it. I cannot say what knowledge Ricketts and others had of said act at that time or other time. I recollect of no mention of it.

Question 33. What opportunity, if any, could you or those with whom you conferred — of knowing at that time of the passage of the act or of its provisions, and is it at all probable that if you had known of said act and its provisions at the time of the conference of which you have spoken—that resulted in the conclusion not to subscribe on these petitions—you would not now remember it, and is it not a fact that the first knowledge of the passage of the act was received by you from the agents or representatives of the said railroad company when they appeared before you and made application for an order of election, which you granted, as you have before stated,

556 and is it not a fact that on that occasion that you did not examine all the provisions of said act and concerned yourself with no other parts of said act and observed none except those pro-

visions that touched your duties with reference to the ordering or having the election?

Answer. My opportunities for knowing *the* of the act or its provisions were from the public prints. I took the Kentucky Yeoman, published at Frankfort, our capital, which generally published the daily acts of the Legislature, and I kept myself informed of all legislation, but more particularly that which was of interest to my people. I do not know what opportunities others had. I do not know what the probabilities as to my memory would be as you ask. I cannot say that the first knowledge I had of the passage of the act was received by me from the agents or representatives of the railroad company at the time spoken of in the question. It is not a fact that I only on that occasion examined no other parts of *of* said act or concerned myself with no other parts of said act or observed none of the provisions other than that — touched my duties with reference to the orders or having the election. I knew well
557 at that time all the provisions of said charter, and I had often examined them and studied them as I always did any question that affected the interest of my people and State, and always as judge acted advisedly and not in the dark.

Question 34. How many in the county of Muhlenburgh took the Kentucky Yeoman?

Answer. There were a good many copies taken in this town—Greenville—at the time. I cannot say that it had a general circulation over the county. It was an old-established paper at the capital of the State, and it was taken for its reports of the proceedings of the Legislature and of dicissions of the court of appeals.

Question 35. Did you, at the time of the conference, resulting in the conclusion of which you have mentioned not to subscribe on petition, recognize that there was any other act of the Legislature except that of Feb. 24, 1868, under which a subscription could be made or an election held?

Answer. I do not know what I recognized then.

558 Question 36. You speak of petitions received and a subscription of $300,000.00, and that somebody demanded $400,000.00, and that you cooled in your ardor for a subscription on account of this enlarged demand; all of which you seemed to put before the conference that resulted in a conclusion not to subscribe on petitions. Now state what number of voters signed those petitions, what was the amount they proposed to subscribe, by whom $300,000.00 was first named—by the railroad or by the people—and who was it that demanded the $400,000.00 subscription—the railroad or some one else—and state all the facts and circumstances connected with this matter.

Answer. I cannot now say how many voters signed said petitions nor do I now recollect what amount was proposed to be subscribed by them. $300,000.00 was never named to me by any one, either railroad officials or agents or others, that I know of to me, but before any proposition were proposed for any amount it was generally
559 talked about among ourselves, the citizens of Greenville, in making estimates for counties through which the railroad

would pass. Our estimates was put down at $300,000.00. The first intimation of any amount that I had that would be asked of the county was by President Thomas & Att'y H. C. Pindell about one hour before I called the court and made the order for the election. I am satisfied the petitions asked for a less am't than $400,000.00, and there was not a majority of the voters of the county who had signed them when they were called in. My best recollection — $300,000.00 was called *called* for by the petitions. The first I saw of said petitions Judge Ricketts handed me one and asked me to make copies, which I did—a good number of them. Judge Ricketts was a lawyer here at the time and a friend of the enterprise and took great interest in the proposition; was acting, as I have said, as att'y for it at the time I made the order of election and was the local att'y for it here up to the time he removed to Texas, 8 or 10 years ago.

560 Question 37. Look at the original act of incorporation and state if you are not the S. P. Love mentioned in the said act as one of the incorporators. If you say you are, did you take stock in the said railroad company? Also state whether or not there was subscription of stock obtained by the incorpor-tors, as provided for in the said act; also state whether or not the incorporators named in the said act asked the Legislature of Ky. to pass the act of Feb. 24, 1868? And at whose instance and request, if not by them, was the said act passed, and were the incorporators named for Muhlenburgh county consulted about the matter or informed before or during the application for the said act or while the same was pending as a bill that such an amendment to the original charter was asked of the Legislature or being in anywise agitated before it?

Answer. I am the same S. P. Love and one of the incorporators for Muhlenburgh county. I took 2 shares stock, $100.00 each, but have never paid it. There was a test case, as I understand, of a case against E. R. Weir, Sr., & Dr. W. H. Yost, of this place, on their subscription. I prepared their answer in the United States court at

561 Louisville, and I learned afterwards that another lawyer at Louisville, probably Walter Evans, had amend- said answer, and they, Weir & Yost, beat the case; at least, they informed me they have never had it to pay. I have never been called upon to pay. There were subscription- of stock obtained by the incorporators, but I do not know w-ether the amount was subscribed as required by said act of incorporation. I do not know that the incorporators or a majority *of* mentioned in said act of Feb. 24th, 1868, asked the Legislature to pass said act, nor do I know at whose instance or request was said act passed. I do not know whether any of the other incorporators for this county were counseled about — matter or informed before or during the application for the said *for the said* act pending for such an amendment or in anywise agitated. I never was in any way consulted about the matter mentioned in the question. I do not know at whose instance the act of 24th Feb., 1868, was passed by the Legislature nor who applied thereto for its passage.

Question 38. Were any individual subscribers of stock who subscribed under and to the incorporators of Muhlenburgh county

ever compelled to pay their subscriptions of stock or did any
562 of them pay their stock so subscribed? If you say they did not, state the reason why; also state whether any individual subscribers of stock to the said railroad company ever paid their stock.

Answer. None that I know anything about. I do not of my own knowledge know why they did not. I know of no individual subscribers of stock to said railroad company that ever paid their stock. I paid two calls of *of* 10 per cent. on my subscription, but no more. I know of no one in the county but myself that paid any call on their stock or *ever* pay their stock or *or* any part of it, and I amend my answer to question 37, X examination, where I said I never paid it, to this extent as stated in this answer.

Question 39. You have in your examination-in-chief, in answer to question No. 25, stated that, under the circumstances and the matter having been for weeks expected, 10 days' notice was sufficient to allow the tax-payers to know that the election was to be held and to give him time to take counsel and advise himself as to his
563 interest. Now state what are the circumstances to which you refer in your answer.

Answer. It is embraced in the question and answer No. 25. It was well known that an election would be called for and the notices posted after the order for election and the general knowledge of the fact among the people.

Question 40. Now, when was it known and how did it become generally known that an election was to be called, you having already stated that petitions for a subscription had been circulated among the people, and that the conclusion had been arrived at by the friends of the railroad whom you have mentioned not to subscribe very shortly before the application to you holding court was made by the officers and agents of the said railroad company and after the passage of the act of Feb. 24, 1868?

Answer. At the time the petitions were drawn and circulated it was known that the subscription could be made in either way, by petition or by an election, and this was discussed by some per-
564 sons both in town and the county, and it was by a talk with numbers of persons that changed my determination to propose an election as being more satisfactory to the people, and I promised them to do what I could to have the election; and this information was known before I had the talk with Judge Ricketts about the election instead of by petition, as I have stated.

Question 41. Then it was while the petitions for a subscription were being circulated that you came to the conclusion to have the question as to a subscription to the railroad settled by an election?

Answer. It was whilst the petitions were out in the hands of persons seeking signatures that I suggested to Judge Ricketts that a vote would be more satisfactory to the people of the county, and that was the time I came to the conclusion as announced to Judge Ricketts.

Question 42. Then you had an interview with the said Ricketts and an interchange of opinion announcing your conclusion to have the question settled by an election as the more satisfactory method

before the interview with the said Ricketts of which you
565 have before spoken of and which you fix at a time very shortly before the presentation of the order by the company for an election?

Answer. I had no interchange of opinions with Judge Rickets. I merely said to him that I thought a vote by the people of the county on the proposition would be more satisfactory to them, and asked him to write to the railroad officials, which he informed me he had done and they agreed to it. I fix the time as shortly before the order was made, but I do not say it was "very shortly before the presentation of the order by the company for an election," as stated in the question. I cannot say how long before the order, but, as I have said, it was shortly before. I do not mean to say, as suggested by counsel, that there was more than one conversation on this point by me with Judge Ricketts. I had but one.

Question 43. Who were the persons in the county you talked with in regard to the mode of settling the matter of subscription as between the petitions or by an election? State in what part of the county they lived.

566 Answer. I cannot at this late date remember names, but I do remember that from complaints of a general nature that I was induced to entertain and make the suggestion to Judge Ricketts.

Question 44. State what were the "complaints of a general nature" which compelled you or induced you to disapprove petitions as to the method of making the subscription.

Answer. That those persons circulating the petitions would induce many persons to sign them that would not vote for it at an election, and that an election would be a fair expression of the will of the people and more satisfactory to them. I did not disapprove of petitions, nor was I compelled or induced to change my mind, only that I wished to give the voters a fair chance to express their choice on the proposition, and that improper arguments would be used to induce vote-s who had not much pecuniary interest in the matter — sign petitions when they could not be influenced to vote for it.

Question 45. Is it not a fact that those who were carrying around the petitions were in the interest of the said railroad company
567 and soliciting, on behalf of said railroad, names to the petitions.

Answer. I cannot say they were in the interest of the railroad company from employment, but I can say they were interested in behalf of the proposition as friendly to it, and persons were selected from all over the county to circulate them from their being known to be in favor of the proposition.

Question 46. State what month it was of the year, whether it was 1867 or 1868, in which you announced to Ricketts the conclusion to which you had arrived, that you would make no subscription on petitions, but would require an election to settle the question. Give the time as near as possible.

Answer. I do not remember to have said to Ricketts that I had concluded to make no subscription on petitions, and I refer to my

other answers herein for what I did say. I am satisfied it was in 1868 and shortly before the order was made for the election. I cannot give the month; this is as near as I can give of the time.

568 Question 47. Inasmuch as I have misunderstood you in your explinations of what you did say to Ricketts, please state now what you did say to said Ricketts, in order that I may hereafter make no mistake.

Answer. I do not know that you have misunderstood me in my explination of what I did say to Ricketts, but that you may hereafter understand me I, in substance, if not in exact words *words*, said to Ricketts at the time spoken of that it would be more satisfactory to the people of the county that they should have a vote on the proposition rather than the stock should be subscribed on petitions, and I wished he would write to the railroad officials to that effect and get them to agree to a vote, which he afterwards informed me he did; and then it was that the court was held and order made for an election, as I have in this examination stated.

Question 48. State in what regard I have in any question heretofore substantially made any mistake when referring to what passed between you and Ricketts.

Answer. I do not know that any has been made, but your
569 last question before this seems to intimate that you misunderstood me in that regard; I mean question 47.

Question 49. After you had announced to Ricketts your view, as set forth in your answer to cross-interrogatory 47, did you take any steps to stop the circulation of the petitions? If you say you did, what were those steps?

Answer. I do not now remember that I did, but the petitions were brought in and the most of them given into my custody.

Question 50. Were these petitions brought in after or before the communication made to Ricketts, as stated in your answer to cross-interrogatory No. 47? If some were before and some after this, then so state.

Answer. I cannot now say; it is probable that some were brought in before and some afterwards. They were not all given to me at the same time, but from time to time, so that I cannot remember as to whether before or after the conversation with Ricketts referred to in the question.

570 Question 51. Did you, officially or otherwise, give to the people of the county any notification or intimation that petitions for subscription would not be acted on by you, and is it or not a fact that after your conversation with Ricketts, as set forth in answer to cross-interrogatory 47, that the railroad company withdrew the petitions and the persons circulating them for and on behalf of the subscription?

Answer. I gave no official notification to the people, but probably spoke of it frequently. There never was by me any official action taken in regard to the petitions, either in putting them in circulation or withdrawing them from circulation. The railroad company never by any act that I know of withdrew said petitions, nor did they ever

have anything to do with circulating them that I know of. They were gotten up by the friends of the enterprise in Greenville.

Question 52. You say you spoke to the people in regard to the matter of not considering the petitions as a proper basis of making the subscription as a matter that you had concluded upon. Now, in order that we may know to what extent the people were in-
571 formed of this, state whether you made this talk in public speeches over the county or in your casual talk to the citizens of Greenville or as you might meet citizens from other parts of the county. If you gave this notification by public speech, state what places. If you gave it as indicated in the latter clause preceding this, to wit, by casual conversations, over what space of time did these individual and casual conversations extend before the order made for the election?

Answer. I never made any speeches publicly on this proposition or any other connected with this railroad question in the county. If I ever spoke of the change it was in private conversation only. I can't say how long before the order was made that I talked about the change. I have an indistinct impression that Maj. Jesse More, now living in the county, and James Henry, who is now dead, commended me for submitting the proposition to the people by election, and others, but I will not say that More & Henry did. It is only an impression now on my mind.

Question 53. When the citizens came in the way of com-
572 plaint, protest, or warning, as the case may be, as to the making of a subscription on petitions, did you and they at that time look at and consider the matter as under the act of March the 9th, 1867, amendatory of the original act of March the 5th, 1867?

Answer. No citizen came to me in the way of complaint, protest, or warning as to making a subscription on petitions, nor did I consider or they consider it at the time under any act in regard thereto. I gathered my information as to a vote being more satisfactory by conversations had with the people in my intercourse with them.

Question 54. In gathering your information as to the wishes of the people in regard to the question of how the subscription should be made, in whatever way you may term their expression of one way over another and by whatever name you may call it, were you and they not speaking under the belief that there was a legislative act under which either method could be resorted to? And if you say you did not, as well as the citizens who conversed with you, consider the matter with reference to such an act, please ex-
573 plain how either you or the people could talk about or talk with reference to a preference between two methods of making the subscription.

Answer. I know there was an act to submit the question to a vote of the people or make the subscription on petitions, and I suppose the people did or else they would not have expressed a wish to submit it to a vote.

Question 55. State whether there is any other act in regard to the Elizabethtown and Paducah Railroad Company authorizing the

subscription by either of the two methods—petitions or an election—except the amendatory act approved March the 9th, 1867.

Answer. None other that I know.

Question 56. When did the people, if at any time before the election, become aware of the fact that — act of Feb. 24, 1868, had been passed, and was there any notification given, either by posting or by circulation through the county, that the election to be held was held under this act of Feb. 24, 1868, instead of under the act of March the 9th, 1867.

574 Answer. I do not know nor have information as to whether the people were aware of the fact that the act of 24 Feb., 1868, had been passed, or that there were any notification of the fact given in any way through the court that the election was to be held under that act act instead of the act of March 9th, 1867, but the sher-ff posted notices of the election in the county—I believe printed notices of an election to be held—but whether that notice called attention to the same acts or not I do not now remember.

Question 57. Now, if the people of Muhlenburgh county had no knowledge until the time the notice of the election was posted by the sheriff, was it physically possible for the people of the county to inform themselves or to be informed of that act and its provisions in time to consider and conclude intelligently as to what would be to their interest in regard to the subscription under the act of Feb. 24, 1868, considering the intricacy of said act, its length, territorial extent of the county, its population, and the means of intercommunication among the different parts of the county—that is,

575 could this result have been accomplished with reference to the ordinary and usual way of informing the people and in the usual manner of consultation and advising themselves as to measures touching their interest? I mean could they have been so advised and instructed and had reasonable time either in the 10 days or the 15 days.

Answer. I do not know nor have I any way by which I can state they could or could not have known the matters mentioned in the question.

Question 58. Look at the original order filed in the county court and state what appears to have been written below the concluding word of the order as entered in the order book, and state whether or not the same is cancelled. Please make the word so cancelled a part of your answer to this question, and state who A. A. Gordon was and what relationship he bore to the Elizabethtown & Paducah Railroad Co.

Answer. I have examined the order referred to and find written below the concluding words of the order spoken of these words, and are *these* cancelled, and I make said words and cancellation a part of this answer.

576 Question 59. Please state whether on examination of the order in connection with these words cancelled of which you have spoken and the circumstances attending the presentation of the order there can be any other fair presumption than that the order was written in the office of or under the supervision of the board of

directors of the Elizabethtown and Paducah Railroad Co. word for word just as it appears entered upon the order book of your court.

Answer. I do not know what presumption may be said as to when said order could have been written, but I do know that said order is just as it was present- to the court at the time it was entered.

Question 60. When you received petitions to make the subscription did you have them filed with the clerk. If you say you did not, state why, and if you have any of the petitions now in your possession please exhibit them and make them part of your answer to this question, and say whether or not the petition or petitions filed by you is of the same tenor and effect which you received and may be unable to present in your answer.

577 Answer. I never received any of those petitions to make the subscription nor in an official capacity. I did not file them with the clerk for the reason they were no part of the records of my office or of the clerk's; they were returned or delivered to me in a private capacity and I kept them for future reference. I have some of said petitions in my possession ; how many I do not know. Upon a slight examination in my office I find one which I file here as part of this answer, marked "petition ;" and it is, as I recollect, an exact copy of all the petitions that was circulated in the county.

Question 61. Are you familiar with the voting members of district 2, commonly called Boggess, and district No. 3, commonly called Court-House? If you say you are, please state the voting member- of these respective districts at the election of 1868, of which we have been speaking; then examine poll books of said election and say how many votes were cast, on which side *side* they were cast, and say whether or not the vote then taken in these respective precincts was up to or under the voting numbers of said precincts.

578 Answer. I am. The vote cast at the election for & against the railroad proposition in the Boggess No. 2, as I find from the poll book, is 283 for the proposition, 32 against; at the Court-House No. 3, 297 votes for and 1 against the proposition. The vote was under the voting population of each of said districts. I find in Boggess No. 2, at the election held in August, 1868, at which the vote-s voted as between candidates for Governors (Stevenson & Baker), there was cast 358 votes, and in Court-House district No. 3 there were cast in same election 332. I mean for both candidates.

Question 62. State whether there are any other districts in the county with a larger voting *voting* population than the 2 precincts just mentioned; if so, state what ones they are that are larger or as large.

Answer. I beleive there was South Carrollton district No. 1. There was none other anything like as large in voting population. I find on examination of the poll books of the election held for the railroad proposition in said South Carrollton district No. 1 there were cast for the proposition 29 and against it 329. I also find on examination of the August election afterwards as for the candidates (Stevenson & Baker) for Governor there were cast in said election 288 votes for both of them.

579 Question 63. State whether or not the partizans of the railroad did most abound and were most active in districts 2 & 3, and whether or not the force of the friends of the railroad was not expended most energetically in procuring voters for the subscription over any other district in the county.

Answer. In those two districts the friends of the proposition were energetic in having the votes for the proposition cast. I cannot say they were more energetic than at other precincts, for I was at none other than those two on that day.

Question 64. State whether or not you were very familiar with the pecuniary condition of the voters of districts Nos. 2 & 3; and please state whether or not in your observation at the polls on that day if it was a fact that the impecunious and men of little or no taxable property generally voted for the subscription.

Answer. I was not very familiar with the pecuniary condition of the voters in said districts. In my observation of the polls that day and as I now recollect *that* there were more men of property voted for said proposition than the impecunious, who had
580 little or no taxable property. I cannot state, but my impression is that the most of the impecunious voted for it, that voted that day.

Question 65. At the time you appointed the officers to hold this election, ordered May 15th, 1868, was it not a fact that the law of the State required that the officers of the election should be appointed annually for each county? If you say such was the law, state at the time of the election whether or not there was in existence such regular officers to hold the elections in Muhlenburgh county, and, if you say there were such officers, state why you did not have them to hold the election, instead of making new appointments to hold this special election.

Answer. The law of Kentucky, found in the Revised Statutes which was then in force, page 432, article # 3, chap. 32, sec. 1, says: "Each county court shall, in the month of June or July in every year, appoint two justices of the peace, if so many there be, or one justice and one other suitable person as judge and a clerk of the election for each precinct in the county." Also: "It shall also in the month of March or April every second year appoint two suitable persons as judges and a clerk of election in each district for
581 the election of justices of the peace and constables in the county. Such judges & clerks shall hold their offices till their successors are appointed and qualified, &c., &c." I cannot now state without reference to the records whether there was in existence such regular officers of election. The reason they did not (if such were in existence) hold the election was because I appointed other officers to hold the election, as provided by section 2 of the amended charter, approved Feb. 24th, 1868.

Cross-examination in regard to the printing order:

Question 66. Without recur-ing to your examination-in-chief my recollection is that you stated in substance that some one of the jus-

tices of the peace in session with you at the time when holding the court of claims in 1868 moved the order in regard to the printing of bonds. If I am right in my recollection of what you stated in your examination-in-chief, what one of the justices of the peace moved the said order?

Answer. I cannot now tell his name.

Question 67. Did you make any other application to the court in regard to the printing of said bonds than what appears in the
582 paper which you style in your examination-in-chief as a report made to the court of claims and which you have heretofore made by copy a part of your deposition in answer to question in examination-in-chief? If you say you did not, please now examine it very carefully and see whether in that paper you ask the court of claims for an order to print and whether or not there is anything in that paper that can be construed into anything else than an application to the court for an appropriation to pay for the printing of said bonds.

Answer. I made no other application to the court that I have any recollection about. The language of the report in this regard speaks for itself and any construction I might make or give of its language would not in all probability be of much weight with the court.

Question 68. Was it your usual habit to make a report to the court of claims in writing of the matters of business attended to by you for the county and calling attention to matters to be *to be* provided for by them and of the general character and tenor
583 of the paper to which your attention had been called and of which you made a copy thereof a part of your deposition; and if you did so was such paper filed, and, if not, why not?

Answer. I first went into office as county judge in Sept., 1866. The court of claims met in November thereafter. I made no report to that court, but I did to the next court of claims, in 1867 and 1868, and probably for the other two years of my first terms, or rather as long as I was the commissioner of the county, and when I ceased to act as such commissioner I made no other reports. The reports were left with the clerk of the county court among county court papers, and if they ought to have been marked filed it was his duty and not mine to file them. I was appointed by the court (at what term I do not remember) to act as county commissioner to superintend the business of the county in all matters that required attention, and it was my own idea about a writ-en report, and I made them embracing every matter of business that came under my supervision, and for which services the court of claims would make an extra allowance to my salary of $100.00 for such services.

584 Question 69. Look at Order Book 8, page 336, at an order purporting to — made December 1st, 1868, it being the same order to which your attention has been called in examination-in-chief and about which you have deposed, and please incorporate in your answer an exact copy of said order as it was written in the said order book in the first instance by whoever entered the same. State also in whose handwriting, if you know, the entire order was written; and after you have answered this part of the question,

then state if there are erasures in said order or attempted erasures, and what words or language are erased or attempted to be erased, if you can now distinguish *now* the words or language so erased.

Answer. I have looked at the Order Book 8, at page 336. An exact copy of said order is thus: "Ordered that S. P. Love —, and he is hereby, appointed a commissioner on behalf of this county to have the bonds of Muhlenburgh county printed for $400,000 in the capital stock of the Elizabethtown & Paducah Railroad Co., in accordance with the order calling election to vote said amount, if such bonds be necessary, and report to this court." This is the exact language of the order as originally entered. In said
585 order, as it now appears, *the* there has been an attempted effort by striking a line across some of the words of the order thus: "Commissioner on behalf of this county."* The order was entered in said order book by Thos. Bruce, the then clerk, in his handwriting, which I recognize as genuine.

Question 70. State by whom or at whose instance the erasures or attempted erasures were made to which your attention has been called and which you have mentioned and set out in your last answer.

Answer. I do not know by whom or at whose instance the erasures were made. I do know that when I, as judge of said court, signed said order book for that term of the court no such erasures or attempt at it was shown by the book or order, and I do recollect that the first time my attention was called to the matter was in 1875. I think I had occasion to make an examination of the records on this whole railroad matter, & I discovered the matter, and the ink used in the erasures shown it to have been done at a subsequent time to its entry. It is darker than that used in entering the order.

586 Question 71. Who could have had any notice for making that erasure after the signing of the orders of which it is a part by the county judge?

Answer. I do not know what motive any one could have had for making these erasures, but at the time—1875 & the year previous, 1874—several persons' official acts in regard to that order and *and* actions were in question before the people in the part they took in making all the orders in regard to this matter, and said persons were candidates before the people — 1874 & 1875.

Question 72. Who were the persons spoken of in your last answer as being candidates?

Answer. In 1875 myself and several of the justices of the peace who went to my points of speeking and interrupted me with questions on this subject of the orders about the railroad and my action on it as county judge in 1874. I cannot call to memory what justices of the peace were candidates.

Question 73. You have stated that the order was in its full integrity and without the erasures mentioned when you signed the orders

---

* Erased in copy.

of the term of the court. Now state when you had the
587 bonds printed, if you did so, and whether you made a report of your action in the matter to the justices of the peace assembled as a county court. If you say you did so, did you make said report in writing or otherwise, when, and is there any notice or minute of the same upon the county records or elsewhere?

Answer. When said order was made and entered I so reported to the treasurer of the board of the sinking fund, F. B. Hancock, who was a banker at Greenville at the time, and through him had the contract made with a company at Louisville—German & Bro. or Co.—for the printing of the bonds. They were printed and paid for out of the surplus of the tax collected to pay the coupon interest on the bonds by the board of sinking fund, who, through their treasurer, made report of that fact to the court the first term thereafter. I made no report to the justices of the matter.

Question 74. In the question which you have last answered I asked you when you had the bonds printed. You do not give the date; likewise you state that you reported to the treasurer of the sinking fund, F. B. Hancock, and that he had the bonds, and
588 that the money for the printing of said bonds was paid out of surplus money collected to pay the interest coupons on the said bonds, and that the board of the said sinking fund reported that fact to the court at its first term thereafter. Now, I wish to know how long after making the order about the printing of the bonds it was before they were printed Did they come into your hands after they were printed, and did you deliver them into the hands of the Elizabethtown & Paducah Railroad Company? And if you say you did, give the date of it. State under what act of the Legislature the sinking-fund board, of which F. B. Hancock was treasurer, was created, and what connection had the said sinking-fund board with the justices of the peace of said county when in session convened with the county judge. Did the said act establishing the said board direct or provide that the said funding board should transact with them in anywise the business they were appointed to control or manage?

Answer. I cannot state definitely how long it was after making said order that the bonds were printed, but it was some time
589 in the early spring, as I best recollect, that said bonds were delivered to me and the clerk of the court. I delivered them into the hands of the secretary, A. A. Gordon, at Louisville, in this way: When the clerk, Thos. Bruce, and myself had completed signing $200,000 *dollars*, one-half of said bonds, I delivered them to said secretary in person, at the office of said company at Louisville, Ky., and then returned home, and when we, the clerk and myself, had finished signing the other half, $200,000.00, I in person delivered them to said secretary, at Louisville, and the certificate of stock will show the exact date that I completed the delivery. I may have delivered them before that date. The act creating the sinking-fund board of the county is the amended act of Feb. 24th, 1868, and is included in sections 10 to 25, inclusive, of said act, and the duties of said sinking-fund board are defined therein, and I make a refer-

ence thereto for my answer to that part of the question. It speaks for itself and I do not think it necessary for me to put my construction upon it.

Question 75. When was the first tax collected for payment of the interest coupons on said bonds?

Answer. By reference to the order book of the county court
590 of this county I find on the 1st day of June, 1869, I made the first levy for the payment of the coupon interest of said bonds—1st March, 1869, to 1st day of March, 1870—that is, semi-annually for 1st March, 1869, to 1st September, 1869, and from the 1st day of September, 1869, to the 1st day March, 1870. At the May term — a regular county court held by me on the 1st day of June, 1869, I made the levy.

Question 76. Then it was not possible for the officers of the sinking fund to have had any surplus in their hands out of which to pay for the printing of these bonds before March, 1870, when the last semi-annual interest was paid?

Answer. There was always a surplus over the am't required to pay the coupon interest in the hands of said board upon the settlement of it with the sheriff, as I was informed, and I may be in error in stating that the board at the first court of claims reported the fact of payment for printing the bonds.

Question 77. Please look at the county court session, when the same was constituted of the justices of the peace and yourself, for the years 1869 & 1870, as well as 1871, or as long after as you may
591 please, and see if there is any report made by the board to said courts.

Answer. There is not, but my recollection is that Mr. Hancock, treasurer of said board, exhibited his settlements made with the sheriff and his disbursements on his record book in open court. They were read out by him to the court and looked over by me and all the members that wished to, and he probably furnished a balance-sheet. If he did, they were placed among the county court papers for that term; of this balance-sheet, however, I will not be positive.

Question 78. Then, according to your recollection, the only presentation made by Hancock was the settlements he had made with the sheriff, Hancock making these settlements as treasurer of the funding board, and these settlements with the sheriff were read to you and the justices or in your presence and that of the justices. Now please state whether the only settlements provided by the act to be had between the sheriff and the sinking-fund board were strictly confined to the tax collected for the payment of interest by the sheriff, on the one hand, and the amount received by the funding board from the sheriff, on the other hand; if this be
592 the case, please state what order or action could by law be taken by the justices of the peace. And was there any duty on their part, setting as a court, to consider or take any notice of these settlements—I mean official duties?

Answer. It was strictly confined to the tax collected for the payment of the interest by the sheriff, on the one hand, and the amount received by the funding board from the sheriff, but the report to the

court also included the disbursements of the said board—in other words, it showed what had become of and how they had applied the money received by them from the sheriff. As to what action could be taken by law by the justices of the peace or their duties sitting as a court in the premises, it would be a matter of opinion on my part, but the law speaks for itself.

Question 79. State whether the report of the sinking fund containing the expenditure for the printing of bonds, or any other report made by the sinking fund to the county court when composed of the county judge and the justices of the peace, containing an account of the disbursements of the sinking fund, was ever filed or even lodged among the records of that court, and whether
593 the said reports or any notice of them appear upon the records of said court, and further say, that even supposing the funding board had made a report to such court of their disbursements for taxes collected for interest, what official action had the justices of the peace the right to take with reference to said report. What did the law require them to do with reference to said report in the way of approval or disapproval, or what action of any kind whatsoever with reference thereto was either in the duty or power of such a court composed of the justices sitting with the county judge?

Answer. No such report of said board as I would be positive about was filed or lodged among the records of the court. I have made no examination. No notice of them as I have seen appear- upon the records of the court. As to the balance of the question the law speaks for itself. I have seen the entry upon the books of the funding board showing the printing of the bonds had been paid for by said treasurer. The books were never part of records of the court, and are still in the hands of the treasurer, F. B. Hancock.

Question 80. How much did the printing of the bonds cost,
594 and was not the bill of the printer and lithographer paid before the sinking-fund board had the money wherewith to pay it, and is it not a fact that this bill was paid by the Elizabethtown & Paducah Railroad Company in the first instance, and if any money was afterwards or subsequently devoted for or on account of the printing and lithographing of said bonds it was paid to the said company by the said board out of the interest taxes paid over to them in the way of reinbursement to the said company? Is it at all probable that the printer or lithographer of these bonds laid out of his bill until the said board had got a surplus into its hands?

Answer. The printing of the bonds cost $600.00, probably a little more; I will not be exact as to the amount of cost. I know nothing about the railroad company paying, in the first place, for the printing of the bonds and afterwards reimbursed by the board of the sinking fund, or the probabilities of the printers and lithographers waiting for the payment out of surplus.

Question 81. From your knowledge and experience in business in commercial cities, particularly in Louisville, Ky., where the
595 bonds seem to have been printed, do you think it at all likely that the printers and lithographers of these bonds would have laid out of their bill for the work done until the funding board had

collected money out of which to pay for them, and if they had done so would it or not have been an exception to usual and ordinary way of doing business in commercial circles as that of Louisville?

Answer. I think it more than likely they would, particularly if the parties applying to them were responsible themselves for the amount and assured them that it would be paid and they were satisfied with the representations and responsibility of the county, nor do I think *in* this state of case would be an exception to usual and ordinary way of doing business at business centers.

Question 82. Did not the railroad company and yourself consider the act of the 24th of February, 1868, as excluding the justices of the peace of the county from any participation in any manner in the execution of said act, and did not you and the said railroad company act upon this conception and view of said act, and did not you administer the said act upon this principle, to wit, the justices
596 of the peace were charged with no duty in said act and they had no right to interfere in any particular or obstruct in anywise the execution of said act or to meddle with any matter arising under said act whatsoever?

Answer. I do not know what the railroad company thought about the act of Feb. 24th, 1868, excluding the justices of the peace of the county from any participation in any matter in the execution of the said act. I did and acted on that belief or principle—that is, that the justices of the peace were charged with no duty in said act, and that they had no right under that law to interfere in or any way participate in anywise in the execution with any matter arising under said act, and I so believe now.

Question 83. That being your view of the act, what occasion was there for an application to print said bonds on your part if such application was made to the justices of the peace? Now, what right had the justices of the peace to take in regard thereto; was it not a matter, according to the construction of the act which you have given, entirely outside of their power and duty, and if they
597 had refused to order the printing of the bonds when so applied to would that refusal have stopped or arrested in any way the printing of those bonds?

Answer. None whatever, but upon the reception of my report, a copy of which is filed with my deposition, they did take action. The refusal by the justices to have made the order *it* would not have * * * stopped or arrested the printing of the bonds. I would then, with the lights before me (I mean the law), have had the bonds printed notwithstanding the opposition of the justices of the peace.

Question 84. Then this order to print the bonds was really volunteered by them after your report to which you have referred was read?

Answer. All I can say about that is the clerk was ordered to make the order, a majority of the justices concurring.

Question 85. Please look at the record of the court, at which you say this order was made by the justices of the peace, and state whether or not 3 out of the 4 orders immediately preceding the

orders to print do not pertain to and embrace matters with which the justices have nothing to do and which were not at all in their jurisdiction.

598 Answer. They *am* orders under the law which I could have made without the intervention of the justices, with the exception of one, as mentioned in the question—I mean 3 of the 4 orders immediately preceding.

Question 86. Look at minute book of the term at which said order was made and give the minute of the order in regard to the printing of the bonds *verbatim* as it is entered on said minute book, and state in whose handwriting the minute is, and state whether or not the said minute does not come immediately after the minute noting the adjournment of court, and in your answer make a *verbatim* copy of the minute as to the adjournment—state whether there is any entry between the last minute mentioned in the question and the first minute mentioned in the question.

Answer. I have examined the minute book kept by the clerk of the court at which said order was made. The minute is thus: "Ordered that S. P. Love be, and he is hereby, appointed a com'r upon the part of this — if it be necessary to have the bonds of M. C.; that said com'r is authorized to superintend the same."

599 Said minute is in the handwriting of Thomas Bruce, who was then clerk of the court. It comes immediately after the minute, adjournment of the court. The minute as to the adjournment is, "Ord. that court do now adjourn until to-morrow at 10 o'clock." There is no minute intervening between the adjourning order and this order. I wish to say—and it is accredited to me by the attorney for plaintiffs—to make the statement that the justices met with me as a court the next day, and the tithe or poll tax was fixed by the court at ($2.00) two dollars per tithe, and I asked the privilege of him to make this statement, because I have been charged with making the order for the printing the bonds when the justices of the peace were not present.

Question 87. Who was the clerk in custody of the records when you say you discovered the erasures in the printing order? If you say it was not the clerk, to wit, Mr. Bruce, who entered the order, state who it was and how long before your discovery of the erasures had he had control of the records and where does he now live.

Answer. John E. Reno was clerk of the court when I first discovered the erasures or attempted erasures. He was clerk of the

600 county court for this county from September, 1874, to September, 1882, eight years, & had charge of the records of said court for that time. He is alive and lives in Greenville, Kentucky.

Question 88. During this cross-examination in reference to the erasures, if I understand you correctly, there was, in 1874 and 1875, a canvass in the county of Muhlenburgh, either in 1874 or 1875, in which the responsibility for the printing order was agitated, and that it was in somewise considered in the said canvass as a matter of blame or censure by the people to be gotten rid of by some parties who might be affected by said order; at least, this is the general idea that I gathered from your statement. If I am right in this concep-

tion of your answer made in this regard please explain how the erasures appearing in the order could have affected one way or the other the question of censure or blame as between any parties that feared injury to them on account of it, inasmuch as with those erasures the order contains every matter that could be charged injuriously or used injuriously to any one in connection with the said order.

Answer. There was a canvass in 1875 in the county. I am
601 not so sure about 1874, but the court was held in 1874, in which the justices of the peace refused to make the levy to pay the coupon interest on the bonds, and the agitation commenced after that court. I was a candidate for the nomination to represent the county in the Legislature in 1875, and I was charged with making orders—not the order particularly about the printing of the bonds, but all orders in connection with the railroad question, and I then went to the records and made minutes of all orders that I or the court, when the justices sat with me in the matter, *was* made; and when I came to this order I at once discovered that the erasure or attempted erasure had been made, and I so announced in my public speeches. It would be dif-icult and almost impossible for me now to state in what way censure or blame — to any one for it. I do recollect that several justices denied being present, and I endeavored by the records to — that they were present. It was a personal matter to me. I do not know that the erasure affected the order one way or other.

Question 89. You acted, so far as that order is concerned, as though the order had not contained the words erased—that is, you
602 made no report to the court, as commissioner or otherwise, as to what you had done in the premises under that order, and no appropriation was either asked of or made by the justices of the peace for payment for this printing.

Answer. I acted, as I believed at the time, under the full order. I do not remember to have made any written or verbal report to the court about anything I did under the order, nor do I remember to have in any way asked for an appropriation to be made to pay for the printing. I believe my action in the matter was protected as well without the erased words as with them in said order.

Question 90. Explain the relation between the minute book and the order book of which we have been speaking in this deposition and say whether the minute book contains the entries made by the clerk during the session of the term and at the time the transaction occurs, these memoranda being brief but full enough to show the matter that was transacted, and whether the clerk takes those minutes after the adjournment of the court and sometimes during the session and extends those minutes into elaborate and full
603 entries, which are found in the entry book, and whether the orders on the order book are not compared or were not during your incumbency of the office of county judge compared with the minutes, where your memory was not sufficient to guide you, and your signature as county judge put to the record of these entries after the adjournment of county court.

The relation of the minute book and order book is this, as I understand it: *is* the minute book is a book kept in an ab-reviated form by the clerk during the session of the court and from which he makes up his orders on the order book. The clerk extends his orders from the minutes and makes full entries, which is found in the minutes. Sometimes he makes no minutes and enters the full order on the order book as made. I cannot say that I ever compared the whole of any minutes of any one court with the orders entered on the order book, but when I come to read the orders before I signed them and was in doubt about the order I referred to the minute book. I signed the order book generally after the adjournment, & sometimes signed the orders when the orders were made up by the clerk and before the adjournment. In the matters of court of claims of
604 November, 1868, I certainly signed the orders several days after the adjournment of the court.

Question 91. I will ask you to again look at the printing order in regard to those erasures and compare carefully the ink that has been traced over the words erased or attempted to be erased and see if upon second inspection the ink is not of the same ink in which the body of the order and the words attempted to be erased were written, and likewise say whether the erasing line drawn does not show the same age with the balance of the order, after making allowance for the fact that more ink was necessarily used in the erasing lines than in the words written.

Answer. I have just examined said order and have heretofore often examined it, and I am still of the opinion that the ink is not the same. I do not believe nor does it show the same age with the balance of the order after making the allowance as stated in the question. Besides, I was well acquainted with Mr. Bruce's mode of writing, and he touched his pen lightly to the paper, and the erasures or attempted erasures are in a bolder hand or stroke than he
605 made with the pen, and I am certain and positive that the erasures or attempted erasures were not made when I signed the orders of that term of the court.

About the Levy.

Question 92. You have stated in your examination-in-chief that at the regular court in May, 1874, you called the justices of the peace to assemble with you at that time for the purpose of attending to certain matters in regard to county bridges which have been washed away by freshets since the adjournment of the November court of claims, immediately preceding, and that you were asked or suggested to by some citizens to submit to the justices of the peace the question of a levy to pay the interest on the bonds and get them to make it — possible. State who these citizens were, where they lived, and whether they were bondholders, and what reason did they give for suggesting this action to you, if they gave any; likewise state whether after the refusal by the justices of the peace to concur with you in making the levy you ever afterwards made a levy for the

payment of the interest on those bonds; and if you say you did not, state *state* why you did not.

606 Answer. I cannot call to mind any other person now before the assembling of the court but Dr. W. H. Yost, who is now alive and resides in Greenville, who advised me as I was going out of office to submit it to the court (this term), though others had talked to me about it, and on the day the court met many persons came to me and asked me to submit the question, and as my term of office expired before another term of the court of claims I consented to submit the question of levy to pay the interest on the bonds, and another reason was that I was at all times willing to accede to the wishes of the people, whose servant I was, to do anything reasonable and consistent with my duties and their wishes. I never afterwards made any levy. The reason I did not is that, the justices of the peace having refused to make a levy, I did not feel that I ought to do so, and that my term of office expired in September thereafter.

Question 93. On the occasion referred to in the last question did John C. Thompson, afterwards county judge, make an address to the court in regard to the levy? Do — remember him in

607 that speech making a special point in this wise, to wit: That the justices of the peace ought to be allowed to, in their discretion, *to* make that levy or not, and say if he did make such a point in his speech what was it that drew it out. Was it not in response to your instance that the magistrates ought to make the levy, and that they had no option in the matter, but would be compelled to make it? Also say whether or not there was a large and excited crowd of the people of Muhlenburgh county in attendance in the court at the time. Also say whether a popular manifestation was then against a levy by the justices of the peace. Also say whether Dr. Yost was not there and is now a bondholder, and, if he was not such then, has he not been since, and is he not now a partizan in that behalf?

Answer. John C. Thompson did make quite a lengthy speech to the court on that occasion, but I do not remember any special point he made against the levy, but he was, as indicated by the speech, excitedly opposed to any levy, and as to his point being made in response to my having said to the court that the magistrates

608 ought to make the levy, or that they had no option in the matter, is not true, for I never said so to the court, or that they would be compelled to make it. All that I said to the court, as I remember, was that I had not called them together to act on this matter, but to make appropriations, &c.; but at the advice of friends I had concluded to submit the question of levy to them, and probably it would be better to make the levy and it would avoid a mandamus, or they might be compelled to make it by mandamus; that it would, if they refused to make the levy, open the doors of the United States court, and every bondholder would, if they brought suit against the county, do so in said court, and the county would stand no chance in that court with a corporation; that it would be better to make the levy to avoid that, and I still think so. There

was a large and excited crowd present in the court-house at the time, and I had great difficulty in keeping order in court, and the manifestation was against the levy. As to whether Dr. Yost ever at any time owned any bond or bond of the county I do not know or ever heard he had or did own them, nor do I know that he is taking or ever took any interest in the matter other than I have
609 said. It was the only time he ever spoke to me about the matter, either before or after that time.

Re-examined by M. C. HAY, attorney for respondents:

No. 1. What office, if any, was the said John C. Thompson a candidate for when he made the speech mentioned in your last answer?

Answer. For county judge of Muhlenburgh county, to succeed me.

No. 2. State whether or not you know one J. H. Morton, who was a justice of the peace during the month of May, 1868, and from that time until the year 1876; and, if so, then look at the poll books of the Boggess precinct or No. 2 precinct for the election held on said 30th day of May, 1868, when the election was held upon the question as to whether the said subscription for stock of the Elizabethtown & Paducah Railroad Co. was held, and state how the name of J. H. Morton is recorded, whether for or against said subscription, and state how many persons named J. H. Morton then lived in said Boggess or No. 2 precinct.

610 Answer. I am acquainted with said J. H. Morton, who was a justice of the peace at the time spoken of. I have examined the poll book at said election mentioned. Said Morton's vote is recorded for the subscription, and he is the only J. H. Morton that lived in said Boggess or No. 2 precinct at that time that I knew anything about.

No. 3. Look at the minute book before referred to and on the page where the clerk of the Muhlenburgh county court made the minute before referred to in this deposition, viz., "Ordered that S. P. Love be, and is hereby, appointed a com'r upon the part of the — if it be necessary to have the bonds issue-; that said com'r is authorized to superintend the same," which minute follows the minute in the following words and figures, viz., Ord. that court now adjourn until tomorrow at 10 o'clock, and tell what is the nature and character of minutes for orders preceding the above mentioned on the same page; also on the six pages next preceding the page on which said minutes appear, and state whether or not there is anything embraced by the minutes on said pages except such matters as were within the jurisdiction of the county court when composed of the county
611 judge & a majority of the justices of the peace of the county; also make a correct copy of all the minutes that are found on the page before referred to which succeed the minute directing you to have said bonds printed down to — including the following minute on said page, viz: Wednesday morning, Dec'r 2nd. Court — pursuant to adjournment.

Answer. There is no order on the six preceding pages of the said minute book that I could have made legally under Ky. law without the justices were associated with me as a court, and they refer to appropriations necessary to pay county debts and allow for services, &c., of persons who had rendered services in various capacities, and nothing else appears in any of the said minutes except what the justices of the peace for said county had jurisdiction of with the judge of the court. The other minutes in regard to other matters on said page down to and including the minute:

"WEDNESDAY MORNING, *Dec. 2nd.*

"Court met pursuant to adjournment."

This:

"It is ordered that M. C. Hay be, and he is hereby, appointed a com'r to settle with the trustees of the Greenville seminary and report to this court."

612 "Ord. that the tithe be $2.00 for the ensuing season."

"Ord. — *to* court do now *jer.*"

Then follows these words:

"WEDNESDAY MORNING, *Dec.* 2.

"Court met pursuant adjournment."

And further this deponent saith not.

S. P. LOVE.

The exhibit above referred to marked "Love" is as follows:

EXHIBIT MARKED "LOVE."

To the honorable the Muhlenburgh county court of claims:

Your commissioner would respectfully report that during the year commencing October, 1867, and ending to-day (the court of claims), Nov. 30th, 1868, that he has let out and had done the following public work:

1st. That he let the poor-house to Thos. A. Pittman upon the following terms: That said Pittman (whose term as keeper of said house expired on the first day of February, 1868) was to take charge of said house, feed and clothe each pauper at the rate of seventy-five ($75.00) dollars each for one year from said 1st day of February, 1868. The number that he has so taken care of will be reported to the court by him, and I recommend that a levy be made in

613 his favor for the amount that may be due him as from his report may be found correct. I also report that, so far as my observation has been, the paupers there confined have been well fed and taken care of; at least I have heard no complaint.

2nd. It became necessary to furnish some of the paupers there with bedding and cooking utensils, and I purchased of M. C. Hay and Company the bill of goods herewith, amounting to twenty-six $\frac{22}{100}$ dollars, including $4 for use of jail, which I recommend

be levied for at this court in favor of said M. C. Hay & Co. I also purchased for said poor-house the following bill of goods of John McIntire & Martin Marshall, amounting to twenty-seven dollars, which—$22.25 of which was for jail—I recommend be levied for in favor of said McIntire and Marshall.

3rd. I also employed T. P. Martin to repair the bridge across Nelson creek leading from South Carrollton to Paradise at the price of twenty-five ($25.00) dollars, which work was done by said Martin according to the contract and received by me, and said Martin having left the county I paid him the said amount of $25.00,
614 as his receipt herein will show. I would also say that I employed Chas. Metzker to convey to the lunatic asylum at Hopkinsville one Mrs. Nanny, a pauper lunatic, for which I paid him of my own money ten ($10) dollars, being unable to get any one to convey said lunatic without paying the cash for the services. I would therefore ask the court to make a levy in my name for the sum of thirty-five ($35.00) dollars, the amount of both claims.

4th. I also bought of Reed and Woodburn — feet of plank to lay across floor in the jail. The account for said lumber, I presume, will be presented to the court and should be levied for. I also employed Lem. Boggess to haul the lumber to the jail, which he did, and for which he should be paid by a levy in his favor. I would say that the lumber now lies in the jail yard, and I employed the present jailor, W. D. Shelton, to lay said floor, which he has not yet done. I would ask the court to make a levy at this court to cover the probable expenses of the work to be done on the jail.

5th. I employed W. P. Hancock to move the railing around the bar in the court-house so as to enlarge the bar, and had L. C.
615 Chatham to make two round tables for the use of court-house. The work done by each will, I presume, be presented to the court, which, if reasonable, I recommend a levy in their favor — said amounts.

6th. During the year there has been sold $54 90 cents' worth of vacant and unappropriated lands in the county, of which amount J. H. Reno collected and now has in his hands the *same* of 24.30, and I have $30.60. Of this amount I granted to John Downing a warrant to the amount of $5.10, which he did not pay me, and he afterwards found out that *these* was no land where he expected to locate his warrant, and I have been unable to collect said $5.10. If consistant I would ask the court to release me from the payment of said sum, as I did not collect it; and, further, I would ask what right has J. H. Reno to sell and receive the money for vacant lands in this county. He is not, as I understand the law, an officer of the court and has no*t* right to sell or receive the money. I would ask the court to make an order that he pay said money order to some one designated by the court. I do not make this suggestion
616 because I think Mr. Reno would do anything wrong if he knew it, but when the court has transactions of the business of the county it seems to me that they are the proper channels through which its business should be transacted.

7th. I forgot to mention, in connection with the poor-house, that

it became necessary to have medical attention for some of the paupers who were sick, and I employed Dr. S. H. Dempsey to visit them, for which he will present his account, which I recommend, if reasonable, should be paid.

8th. There was collected on account of the taxes from the negroes for the year 1867 the sum of two hundred & seventy-four dollars, and paid over to the receiver, B. E. Pittman, by the sheriff, and said receiver received back from the treasurer of the State the sum of two hundred forty-five dollars, which in the aggregate amounts to the sum of *of* five hundred & nineteen dollars, and he has paid out, as levied for the relief of that class of persons, four hundred and forty-seven $\frac{50}{100}$ dollars, which leaves in his hands $71.20 yet be-
longing to said fund, and he should have a reasonable allow-
617 ance for his services in disbursing it. I understand that the negro assessor's book for the year 1867 has been mislaid, and therefor no settlement has been made by the receiver with the sheriff for that fund, and I cannot say whether there will be any more of said fund received.

9th. I collected of U. W. Hancock from the sale of old desks that belonged to the old clerk's office (after deducting the allowance made to him for selling them) the sum of $49.00 *dollars*, which sum I applied to the payment of a claim allowed me at the last court of claims for $45, which leaves in my hands the sum of $4.00 subject to the order of the court.

10th. I contracted with B. J. Humphrey for the construction of a new bridge across Cypress creek, on the road from South Carrollton to Bremen, near John Nofsinger's, at the price of — dollars. I examined the old bridge at that place before I contracted for construction of a new one and found it rotten and not worth repairing. Said Humphrey built said bridge in every respect according to contract, and after I had examined it I received it as a good job. I there-
fore recommend a levy in his favor for the price agreed for
618 the work.

10th. At the court of claims for the — 1866 there was a number of levies made by the court that was not paid by the sheriff out of the taxes collected for the year 1867, from the fact that the levies made amounted to more *them* the taxes collected; consequently said claims remain unpaid, and it becomes necessary for the court at this term to make some arrangement for their payment. I have, as far as I have been able, collected said claims, and here report them, together with the*re* said amounts, which are, as far as I know, correct:

1st.	To W. D. Lindsey	$3 00
2.	" W. F. Mams	1 00
3.	" Simeon Roark	2 76
4.	" J. W. Johnson	6 00
5.	" H. H. Martin	530 00
6.	" A. L. Depoyster	35 00
7.	" S. E. Smith (balance)	64 20
8.	" T. J. Jones (balance)	102 01

9.	To Thos. Bruce (balance)	$102 01
10.	" S. D. Chatham	10 00
11.	" E. G. Neel	40 00
12.	" " "	4 00
13.	" " "	2 00
14.	" " "	2 00
		$903 98
619	Amount forwarded	$903 98
	15. To W. S. Venable	2 00
16.	To J. P. Hendricks	2 00
17.	" T. R. Clark	2 00
18.	" E. R. Weirs	60 00
	Amounting to the sum of	$969 98

which, I think, this court should first levy for; and in making the levy it should be nothing more than right that interest should be allowed on said claims from the 1st day of October, 1867, when due, to October, 1869, when paid; and, further, some of said claims have been transferred to other persons, and when the levy is made it should be in favor of the assignee of the claim.

Then each claim would be as follows:

1.	To W. D. Lindsey, $3.00; int., 2 y'rs, .36; total	$3 36
2.	" U. F. Mann, $1.00; " 2 " .12; "	1 12
3.	" Sim. Roark, $2.76; " 2 " .33; "	3 09
4.	" W. E. Mobley, ⅔ J. W. Johnston, $6.00; int., 2 y'rs, .72; total	6 72
5.	" F. B. Hancock, ⅔ H. H. Martin, $530; " 2 " .63; "	593 30
7.	" Do. do. ⅔ S. E. Smith, $64.20; " 2 " 13.85	68 05
8.	" Jos. Ricketts, ⅔ A. L. Depoyster, $35; " 2 " 3.80	38 80
9.	" Thos. J. Jones, $102.01; int., 2 y'rs, $12.24	114 25
10.	" Thos. Bruce, $102.01; " 2 " 12.24	114 25
11.	" S. D. Chatham, $10; " 2 " 1.20	11 20
12.	" E. G. Neel or his assignee, $48; int., 2 y'rs, 5.76	53 76
13.	" W. S. Venable, $2.00; " 2 " .24	2 24
14.	" J. P. Hendricks, $2.00; " 2 " .24	2 24
15.	" T. R. Clark, $2.00; " 2 " .24	2 24
16.	" E. R. Weir, 60; " 2 " 7.20	67 20
	Aggregate, with 2 years' int.	$1,082 12

620 There was an appropriation made at the same court in favor of A. C. Coleman for $10 to remove rock from a road near Mr. Yeargan, but he never performed the work, & it is not necessary to relevy for it, and a levy for $8.00 for a bridge across Pond river at McMary's, which sum was used in the liquidation of other claims and not set apart for said work, and it now becomes necessary for us to levy another sum for said bridge or we will be compelled to do so by the county of Hopkins, which has made an appropriation for the *that* purpose.

11th. There was a claim for $200 that should have been levied for at the court of claims in 1866 in favor of Jacob Jackson for lime furnished to build a chimney to the poor-house, which I recommend should now be levied for in said Jackson's favor.

12th. I have asked the court to make a levy in my favor for (as above) ---------- $35 00
In which I should have included for buggy hire, 2 days, $3.00---------- 3 00
I now ask that they levy for my benefit an additional sum for services for comparing the polls books at the May election, 1867; August election, 1867; railroad election,
621 June, 1868; August election, 1868, and presidential election, 1868 (for which I have never received pay), making 5 days, $1.50---------- 7 50

Total---------- $45 50

and whatever sum the court may — proper for services as commissioner for the past year. I would said that I have endeavored so far as I could to be economical in the expenditures of the county funds and have *have* made no needless expenditure, but, on the other hand, have put off the *constructing* for public work which, if we had the funds, should have been done. In conclusion, it becomes my duty to call your attention — the demands of the directory of the Elizabethtown and Paducah Railroad Company. You all know that this county has voted a subscription to said road of $400,000, to be issued in bond- payable in twenty year- at the rate of 7 per cent., interest semi-annually, in the city of New York. Before said bonds can be issued they have to be printed. The directory of said road have called upon us, as required by the charter of said road, to take steps for printing of the bonds, and ask that this court take steps to have it done in order to have them ready to go upon the market to raise funds to build the road. I am not prepared to say
622 how much should be appropriated, but doubtless you will be informed to-day by those interested what is best for you to do in the premises, and when you have heard the suggestions you can then determine what amount will be necessary. Should you determine not to make the appropriation legal steps will be taken to compel the appropriation, and which would be attended with costs. Therefore I think it would be best to make the appropriation asked. This, I have said, is only for the printing of the bonds, and not for the delivery of them, and I will say that so far as the delivery of them is concerned that is exclusively in the power of the judge of this court, as I understand, and I assure you that before said company shall have the bonds of the county through me they shall strictly — with the provisions of the order submitting the vote to the people of the county. I shall, with the aid of the people who are the interested parties in this enterprise, endeavor to guard their interest to the best of my ability.

Respectfully submitted,
S. P. LOVE,
Judge Muhlenburgh County Court.

A copy.
Attest:
W. T. STILES, *Clerk.*

623 The exhibit above referred to marked Order "1" is as follows:

EXHIBIT MARKED ORDER "1."

STATE OF KENTUCKY,
MUHLENBURGH COUNTY COURT, *June 3rd*, 1868.

At a call county court held in and for the county of Muhlenburgh, at the court-house, in Greenville, Ky., on Wednesday, the 3rd day of June, 1868.

Present: S. P. Love, county judge.

The judge of this court produced a certificate of the vote of the qualified voters of the county of Muhlenburgh at an election held in said county on the 30th day of May, 1868, at the several precincts and places of voting therein, upon the question submitted by this court on the motion of Samuel B. Thomas, president of the Elizabethtown & Paducah Railroad Company, and the resolutions of the board of directors of said road filed by him and by an order made on the 15th day of May, 1868, whether this court shall, for and on behalf of Muhlenburgh county, subscribe for four thousand shares (four hundred thousand dollars) of the capital stock of said Elizabethtown & Paducah Railroad Company on the terms and conditions set forth in said order, which certificate and vote are
624 ordered to be entered on the record & are in the words and figures following, to wit:

THE COMMONWEALTH OF KENTUCKY, *Muhlenburgh County,* } *sct:*

We, S. P. Love, judge of the county court of said county, and Thos. Bruce, clerk of said county court, duly authorized by an act entitled "An act to amend the charter of the Elizabethtown & Paducah Railroad Company," approved Feb'y 24th, 1868, to count the vote polled at election held in the county, under said act, do certify that at an election held in said county at the several precincts and places of voting therein on the 30th day of May, 1868, under an order of said court submitting to the qualified voters of said — whether said court shall, for and on behalf of — county, subscribe for four thousand shares (four hundred thousand dollars) of the capital stock of said Elizabethtown & Paducah Railroad Company upon the terms set forth in the order of submission aforesaid, upon due comparison and count the vote stood thus: For the railroad subscription, 771 votes; against the railroad subscription, 550 votes; and that a majority of all those voting at said election voted in favor of the subscription of stock as proposed.

625 Witness our hands this 3rd day of June, 1868.

S. P. LOVE,
County Judge.
THOS. BRUCE,
County Clerk.

And it appearing that notice of said election had been duly given by the sheriff at the several places of voting, and that the said elec-

tion had been held and conducted in every respect in the manner prescribed in the act entitled "An act to amend the charter of the Elizabethtown & Paducah Railroad Company," approved Feb'y 24th, 1868, and in accordance with the requirements of the order aforesaid;

And it further appearing from the vote aforesaid that a majority of all those voting at said election voted in favor of the subscription of stock as proposed—

It is now ordered that the subscription of four thousand shares (four hundred thousand dollars) of the capital stock of the said Elizabethtown & Paducah Railroad Company be made by the clerk of this court for and on behalf of the county of Muhlenburgh upon the condition that said Elizabethtown & Paducah Railroad Company shall locate and construct its road through Muhlenburgh county and within one mile of the town of Greenville.

A copy.

Attest: W. T. STILES, *Clerk.*

626 Exhibit above referred to marked "S. P. L." is as follows, to wit:

STATE OF KENTUCKY:

Muhlenburgh County Court.

MAY 15TH, 1868.

Ordered that the following-named persons be, and they are hereby, appointed officers of election for Muhlenburgh county at the approaching election in May, 1868:

To district No. 1, South Carrollton.—Joseph Adcock & John Reed, judges; W. F. Furch, sheriff; W. W. Gibbs, cl'k.

" " " 2, Boggess precinct.—John M. Williams & W. W. Martin, judges; John R. Reno, sheriff; T. J. Eades, cl'k.

" " " 3, Court-House precinct.—E. G. Neel, W. R. Cary, judges; Wm. Irvin, sh.; T. J. Jones, cl'k.

" " " 4, Paradise precinct.—D. B. Roll & J. J. Wood, judges; H. H. Dennis, cl'k.

" " " 5, Myers precinct.—H. G. Newman & S. J. Hunt, judges; Latt Penrod, sh.; Samuel Turner, cl'k.

" " " 6, Summers precinct.—S. M. Eaton & Isaac Miller, judges; John Cary, sheriff; J. R. Roark, cl'k.

A copy.

Attest: W. T. STILES, *Cl'k.*

627 The deposition of CHARLES EAVES, taken on behalf of respondents, is as follows:

Deposition of Charles Eave-.

Question 1st by attorney for respondents. State your name, age, residence, and occupation,

Answer. My name is Charles Eaves; I am 61 years of age; reside in Greenville, Muhlenburgh county, Ky., and am an attorney of the law.

Question 2. State how long you have lived in Muhlenburgh county—I mean during what years have you resided in said county.

Answer. From my birth, in January, 1825, until April, 1865, when I removed to Henderson, Ky., returning to this place in May, 1877, where I have resided ever since.

No. 3. It has been stated by Louis Jones (who was the member of Kentucky Legislature from Muhlenburgh county for the years 1877 & 1878) in his deposition heretofore given in this cause that you, Judge J. C. Thompson, Ex-County Judge S. P. Love, Eugene Eaves, & Judge B. J. Shaver came to Frankfort, Ky., during the 1878 session of the Kentucky Legislature and advocated the passage of a compromise measure (in other words, advocating the pas-
628 sage of a bill authorizing Muhlenburgh county to fund the bonds issued by said county in payment for subscription of stock in the Elizabethtown & Paducah Railroad *county*); and that while there on said trip you got C. T. Allen, the member for Caldwell county, to ask leave to bring in a bill for that purpose, and that after you returned home you prepared and sent him a bill providing for said compromise; that you also sent him various (as many as two or three) petitions, appeariug to have been signed by various citizens of Muhlenburgh county, Ky., asking the passage of said bill, and that the amended said bill so prepared and sent to him by you in some particulars—that he introduced said bill and presented said petitions to the Kentucky Legislature, and that it was afterpassed by said Legislature; that said bill is known as an act of the Legislature & is known as an act to authorize and empower county of Muhlenburgh to compromise and fund its outstanding bonded indebtedness, issue bonds, and levy and collect taxes to pay the same, approved March 18th, 1878. Now, tell whether or not you went to Frankfort, Ky., at the suggestion of any one; if so, at who-suggestion you went. Give all the facts and circumstances
629 connected with that visit to Frankfort, the drafting of said bill, and the sending of said petitions, the manner by which said petitions were procured, and, as near as you can, the number of *of* names signed to said petition. Give a full and detailed account of all of said matters.

Answer. In the latter part of January, 1878, intelligence was received here from Hon. Louis Jones, representative of the county, that a bill had been introduced in the house of representatives and referred to the committee on the judiciary to provide for collecting the bonded indebtedness of certain defaulting counties, this county

included, and requesting that such a course be taken by his constituents as they might think best to avert the proposed legislation on behalf of the bondholders. With a view to taking such action, it was publicly announced that a public meeting would be held here at the court-house, in Greenville, on the 30th day of January, 1878, and on that day such meeting was held at the court-house, composed of a great many of the leading citizens of the county; the crowd was estimated to contain more than one thousand persons.
630 Speeches were made by various persons. The meeting was organized by electing chairman & secretary. A resolution or motion was adopted almost, if not quite, unanimously appointing a committee to go to Frankfort and appear before the committee or committees having said bill in charge and resist the passage of the bondholders' bill. The committee thus appointed consisted of John C. Tompson, Ben. J. Shaver, W. H. Yost, Jr., Eugene Eaves, Judge W. L. Dulaney, and myself. The Muhlenburgh county common pleas being in session, adjourned from the 30th of January, 1878, until the 6th of February, 1878, to give time to the committee to visit Frankfort. The committee left for Frankfort on the 31st January, 1878, and appeared before the committee on the judiciary; most of the members of the committee made short speeches before the judiciary committee. It was thought by the committee that the best plan to defeat the proposed legislation in the interest of the bondholders was to ask the Legislature to pass an act to enable the county to compromise its bonded debt. It was thought that whilst the Legislature would not sanction repudiation it would encourage compromise and give time to effect a compromise. So I was in-
631 structed by the other members of said committee to draft a bill for that purpose, and they returned home and left me in Frankfort for that purpose. I drafted a funding bill and submitted it to Mr. Jones. He expressed some unwillingness to introduce the bill thus prepared. This bill provided that the funding board should be composed of the county judge, the county clerk, the circuit clerk, and of two other citizens of the county selected by said officers. Mr. Jones suggested that the board should be elected and he requested me to back up the application by petitions from his constituents. I promised him to procure and send him petitions until he should be satisfied. I also promised him to have a public meeting convened at the court-house in Greenville, and to notify him so he might attend. I returned home; had a public meeting called for the 9th of February, 1878, and telegraphed Mr. Jones to attend, and he attended the meeting on the day named and made a speech to it. I prepared a petition to the General Assembly of the Commonwealth of Kentucky, requesting the passage of a funding act authorizing and empowering the county of Muhlenburg to compromise &
632 fund its bonded debt. Various copies of this petition were sent out to procure signatures. I procured *a* the signatures of a great many citizens and tax-payers of this county. The petitions sent out by me were returned to me numerously signed, and I sent all the petitions by mail to Hon. Louis Jones, at Frankfort. I counted the signatures to said petitions thus sent to Mr. Jones,

and, as I recollect it, they numbered from nine hundred to one thousand. I continued to send petitions until Mr. Jones communicated to me that he was satisfied. All the signatures I procured to said petition were genuine, nearly all being written by the signer; a few written by me by their direction & in their presence.

I prepare- the funding bill, the one that was passed, just as it is, except that section 20 was added by the judiciary committee and a provision for a poll tax was stricken out. I sent both bills to Mr. Jones and requested him to make his choice between them. I had no interest in the matter other than as a citizen and tax-payer of Muhlenburg county. I have never owned a bond of said county nor any interest in a bond. I have never been employed as the attorney of the holders of any of said bonds in respect to their
633 demands against the county. In answer to an oral question by complainants' attorney I state that, as I remember it, Louis Jones first wrote B. J. Shaver in regard to the matter of the bondholders' application for legislation. I don't recollect whether I saw his letter or not. I don't remember of his writing to Judge Thompson. I can't state the number of signatures I procured to sad petition, but it was several hundred, I think.

No. 4. Did you or not then have any reason to suspect or have you any reason now to suspect, either from the appearance of the petitions that were carried around by persons other than yourself or by any other circumstances, that the names signed to said petitions were anything else but names of genuine voters of Muhlenburgh county, Kentucky, and that the names were signed to said petitions by themselves *at* by some one for them by their directions and in their presence?

Answer. The petitions to be carried around were put in the hands of reputable, trustworthy persons, and I instructed them to see that none but genuine signatures were procured. I believed that all the signatures were genuine; I had no grounds to suspect otherwise.

634 No. 5. Do you know of — holder of the bonds of Muhlenburgh county living out of Muhlenburgh county, Ky., that had any agency or exerted any influence in having the people of Muhlenburgh county to sign said petitions? Do you know that any such bondholder knew that such petitions were being circulated at or before the time they were circulated?

Answer. No holder of any of said bonds had anything to do with the matter, so far as I knew or had any information of. I am sure no bondholder living out of the county had anything to do with it. So far as I was advised or had reason to believe, the bondholders were opposed to the passage of the funding act.

No. 6. Do you know of any one living in Muhlenburgh county who now owns or has ever owned any — the bonds of Muhlenburgh county in excess of the amount required to protect their property in case a tax is levied to pay the interest on said bonds? I mean, do you know of any one living in Muhlenburgh who has or ever had since May, 1874, owned any of the bonds of said county except in such amounts that the past-due coupons would equal their proportion

of such taxes as may be levied in order to meet the interest
635 on said bonds?

Answer. I have no personal knowledge on the subject. In fact I have never seen any of the bonds except part of those that were taken in & funded & burnt by the funding board. The general understanding is that nearly all of the bonds owned by residents of this county were owned by tax-payers in such quantities as to provide coupons sufficient to pay their tax in case a tax should be levied to pay the bonds.

Cross-examined by attorney for complainants:

Question 1. Please state in answer to this question what you have already stated in conversation during the time you have been questioned by counsel for defendants as to the motives and impressions that influenced the action of the committee of which you have spoken, to wit, the visiting committee of Muhlenburgh county, and state likewise whether or not the same motives and impressions were brought to bear upon the people of the county as to induce them to take the action that said committee deemed expedient at the time.

636 Answer. The United States circuit court at Louisville, Ky., (Justice Bland Ballard presiding) has decided that the said bonds of Muhlenburgh county were valid. This fact was an all-important factor in the compromise movement. The general impression prevailed that the court had decided the bonds valid. It was thought and expected for awhile that one of the cases in which Justice Ballard had held the bonds valid would be taken to the Supreme Court, at Washington, but this was not done. The bondholders, by their attorneys, were urging the passage of an act to provide for collecting their past-due coupons. It was thought and believed by the visiting committee, of which I was a member, that the surest way of averting the passage of the proposed force bill was to come before the Legislature, not as bare-faced repudiators, but as too poor to pay the bonds in full, and asking for authority and time to compromise and fund the debt. I thought this was * * * the best course to pursue under all the circumstances, not because I had or felt any interest in the bonds or their holders, but because I believed it was the only means to avert the passage of the force bill. I took pains to impress these views not only on the
637 other members of the visiting committee, who, I believe, concurred with me, but also upon the persons who signed the petitions for the passage of the funding bill, and I have no doubt that their views had a controlling influence with those who signed the petition. Being asked by compl'ts' attorney, I state that a pauper county, so called, in this State, means a county which draws from the State treasury more money than it pays into the treasury.

Further the deponent sayeth not.

CHARLES EAVES.

The deposition of THOMAS J. EADS, taken on behalf of respondents, is as follows:

Deposition of Thomas J. Eades.

Question 1st by M. C. Hay, attorney for respondents. State your name, age, residence, and occupation.

Answer. My name is Thomas J. Eades. I reside in Muhlenburgh county, Ky. I am 61 years of age and by occupation am a farmer.

No. 2. State, if you can, who was the clerk of the election for district No. 2, generally known as the Boggess precinct, when the
638 election was held at said district or precinct on the 30th day of May, 1868, when the question was submitted to the voters of Muhlenburgh county as to whether or not the county court of said county should subscribe, for and on behalf of said county, for 4,000 shares—four hundred thousand dollars—to the capital stock of the Elizabethtown and Paducah Railroad Company.

Answer. I was.

No. 3. State whether or not there was anything unfair, unjust, or illegal in the manner of holding said election or in the manner in which said votes were recorded or taken, and state whether or not there was any illegal votes taken or recorded at said election.

Answer. I know of nothing unfair, unjust, or illegal in the manner of holding said election and there were no illegal voters who voted, so far as I know of.

Cross-examined by attorney for complainants:

Question 1st. State whether you ever saw any notice of that election posted up in the county or at the court-house.

639 Answer. I can't say that I did. I have no recollection of it now whatever.

Further the deponent sayeth not.

THOMAS J. EADES.

The deposition of THOMAS J. JONES, taken on behalf of respondents, is as follows:

Deposition of Thos. J. Jones.

No. 1. State your age, residence, and occupation.

Answer. I am 60 years of age; reside in Greenville, Muhlenburgh county, Ky., and am a merchant.

No. 2. State, if you can, who was the clerk of the election for district No. 3, generally known as the Court-House precinct, when the election was held on the 30th day of May, 1868, when the proposition was submitted to the voters of Muhlenburgh county, Kentucky, as to whether or not the county court of Muhlenburgh county should for and on behalf of said county subscribe for 4,000 shares, four

hundred thousand dollars, of the capital stock of the Elizabeth town & Paducah Railroad Company.

Answer. I was.

No. 3. State whether or not there was any unjust, unfair, or illegal — in regard to said election, the manner in which said
640 election was held or conducted, or in the recording of the votes cast at said election, and state whether or not there were any illegal votes cast or recorded at said precinct at said election.

Answer. There was nothing unjust, unfair, or illegal in regard to the manner in which said election was held or conducted, or in the recording of any illegal votes cast at said precinct at said election, so far as I know, and if any illegal votes were cast I don't know it.

No. 4. State how long prior to said 30th day of May, 1868, had you lived in said precinct. Where were you born? Where did a majority of your relations and the relatives of your wife then live? In fact, tell your opportunities for knowing the people of said district.

Answer. I was born in said district, about 9 miles south of Greenville. I have lived in said district, in the town of Greenville, over 40 years. The majority of my immediate relatives and my wife's relatives mostly reside in said precinct.

Cross-examined by attorney for complainants:

641 Question 1. Did you ever see any notice posted up at the court-house or anywhere else in the said county prior to said election for the purpose of noting that this election was to be held?

Answer. I don't remember anything about that. If notices were posted in regard to said election I don't remember seeing them.

Further this deponent sayeth not.

THOS. J. JONES.

The deposition of JOHN A. STOKES, taken on behalf of respondents, is as follows:

Deposition of John A. Stokes.

No. 1. State your age, residence, and occupation.

Answer. My name is John A. Stokes; age is 63 years; reside in Greenville, Muhlenburgh county, Ky.; am a farmer by occupation.

No. 2. State whether or not you are the same John A. Stokes whose name appears in the proceedings of the funding board of Muhlenburgh county, Kentucky, of date February 16th, 1881, when the following orders or appropriations were made by said board, viz:

First, "On motion of J. E. Wooten, it is ordered that the treas-
642 urer of Muhlenburgh — pay J. C. Thompson the sum of one thousand dollars out of the levy of 1881 as part of his salary as county judge;" second, "It is ordered that the treasurer of Muhlenburgh county pay J. C. Thompson the sum of five hundred dollars, to be used by him in paying an attorney to defend the man-

damus proceedings in the Federal court against the county judge of Muhlenburgh county;" and if you say you are the same John A. Stokes whose name appears in said proceedings as a member of said board, then tell under what circumstances and for what purpose said appropriations were made, and also state whether or — said money was ever used by said Thompson; &, if so, how.

Answer. I am the same John A. Stokes who was a member of the board at the time said appropriation was made. There were proceedings in the United States court at Louisville to compell the county judge to make a levy to pay the interest on the old bonds, and this appropriation of $1,000.00 was made to pay the county judge, J. C. Thompson, for his services, provided he had to leave the county
643 in order not to make the levy, but he never got any of this $1,000.00. It was expected if the mandamus was awarded that the county judge would leave the county to avoid complying with the mandamus, and the $1,000.00 was ordered to be paid to him to maintain him during his absence. The mandamus was not awarded, and as Thompson did not leave the county he consequently never got any of the $1,000.00 appropriation, and the $500.00 was ordered to be paid him and was paid him in order to pay his expenses and attorney's fee to Judge William Lindsay to defend this mandamus suit. The funding board, according to my best remembrance, agreed to advance the money individually to the county judge—I mean this $1,000.00—and expected to get their money back out of the tax levied before this time to pay the interest on the new bonds, and in the event we failed to get it out of this tax we expected to get it out of Thompson's individual property.

Further this deponent sayeth not.

J. A. STOKES.

The deposition of W. H. Yost, Sr., taken on behalf of respondents, is as follows, to wit:

Deposition of W. H. Yost.

644 Examined by M. C. Hay, att'y for respondents:

No. 1. State your name, age, residence, and occupation.

Answer. My name is W. H. Yost; I am 65 years of age; reside in Greenville, Muhlenburgh county, Ky., and am a physician.

No. 2. How long have you been a practicing physician in Muhlenburgh county, Ky., and state whether or not there has ever been any other Dr. Yost practicing in this county other than yourself since you have been here.

Answer. I have been a practicing physician in this county for about 45 years. There has been no other Dr. Yost practicing in this county since I have lived here.

No. 3. State whether or not you owned or had any interest in the bonds of Muhlenburgh county, issued to pay for its subscription to the capital stock of Elizabethtown & Paducah Railroad Company (commonly known as railroad or county bonds) at or prior to May,

1874, the time when the justices of the peace of said county
645 refused to make a levy to pay the interest on said bonds, and also state whether or not you then had any *symphalry* with the holders of said bonds, or was in any manner acting under their advice or suggestions.

Answer. I had none of the bonds. I had no sympathy with the bondholders. I was with the people of the county.

Further the deponent sayeth not.

W. H. YOST.

646 On the 5th day of Sept., 1887, came the parties, by their respective counsel, and filed their stipulation herein, which is as follows:

In the United States Circuit Court for the 6th Circuit and District of Kentucky.

R. H. BROWN *et al.*, Complainants,
against
ALEX. TINSLEY *et al.*, Defendants.

It is agreed and stipulated that the following papers, to wit: (1) paper headed Muhlenburgh county court, Sept., 1881, O. B. No. 10, p. 531; (2) paper headed Muhlenburgh Co. court, May, 1878; 3, paper headed Muhlenburgh county court, Sept., 1881; 4, paper being certificate of result of election held 4 August, 1884, were considered read upon the hearing of this cause, and that they be copied into the record of the case upon the appeal to the Supreme Court of the United States, provided these papers are not already embraced either among the exhibits to bill or answer or deposition or in the papers now enclosed; and provided further, that there be only one copy of these or any other paper or papers put into the transcript. Where the same paper is twice referred to or in the files it is to be merely referred to as appearing on such a page in making up the transcript. If it be found that there is any part or paper either party wants which is not in the record when made up, then it is agreed that a supplemental transcript be
647 made containing the same and the same sent up.

T. M. BROWN,
For Plaintiffs.

The papers referred to—the foregoing stipulation *is* as follows:

Order Book No. 10, *Page* 242.

MUHLENBURGH COUNTY COURT, *May*, 1878.

We, J. C. Thompson, judge of the county court of Muhlenburgh county, and W. A. Mohon, sheriff of said county, and Jno. E. Reno, clerk of said county court, duly authorized to compare the poll books for Muhlenburgh, met at the clerk's office, in said county, on the 7th day of May, 1878, and do certify that at an election held at the

voting places in the election precincts of said county on the 4th day of May, 1878, the following-named persons were duly elected by the qualified voters of the following-named election precincts to fill the office of members of the funding board of Muhlenburgh county, namely:

By precinct No. 1, South Carrollton, J. B. Millard.
" " " 2, Boggess, W. S. Hay.
" " " 3, Court-House, W. G. Jones.
" " " 4, Paradise, J. E. Wooten.
" " " 5, Myers, W. F. Ward.
" " " 6, Summers, W. S. Humphrey.

648 At a call- county court began and held for Muhlenburgh county, at the court-house, in Greenville, Ky., on Wednesday, the 16th day of February, 1881.

Present: Hon. J. C. Thompson, P. J.

Page 470.

It appearing to this court by an attested copy of the record of the proceedings of the funding board of Muhlenburgh county that said funding board, by a resolution adopted and passed in and by said board on the 8th day of February, 1881, request and authorize this court to levy a tax upon the taxable property in Muhlenburgh county of 75 cents on each and every one hundred dollars' worth of taxable property in said county to pay the interest on the new bonds issued according to the provisions of an act entitled "An act to authorize and empower the county of Muhlenburgh to compromise and fund its outstanding bonded indebtedness, issue bonds, and levy and collect taxes to pay same," it is now ordered by this court that a tax of seventy-five cents on each and every one hundred dollars' worth of all real and personal estate in the county of Muhlenburgh, including all amounts given in under the equalization laws, subject to taxation under the general revenue laws of this Commonwealth be, and the same is hereby, levied and imposed by this court for the year 1881. This levy is upon the real and personal estate

649 including amounts under the equalization law listed or to be listed for taxation in said county under the general rev-

Page 471 enue laws of this Commonwealth in and for the year 1881. This tax is levied and imposed under and by the authority of an act of the General Assembly of the Commonwealth of Kentucky entitled "An act to authorize and empower the county of Muhlenburgh to compromise and fund its outstanding bonded indebtedness, issue bonds, and levy and collect taxes to pay the same, approved March 18, 1878, and is levied and imposed to pay the accruing interest on the bonds issued under authority of said act and to provide a sinking fund for their redemption and to defray the necessary expense of collecting said tax and disbursing the money under said act.

It appearing to the court, by proof, that Ezekiel Rice, of Greenville, Ky., is a citizen of the United States, is over twenty-four years of age, and has resided within this county at least two years last past,

it is ordered by this court that the said Ezekiel Rice be, and he is hereby, by this court appointed treasurer of the county of Muhlenburgh for the purpose of receiving, keeping, and disbursing the money collected and to be collected under an act of the Gen-
650 eral Assembly of the Commonwealth of Kentucky entitled "An act to authorize and empower the county of Muhlenburgh to compromise and fund its outstanding bonded indebtedness, issue bonds, and levy and collect taxes to pay the same," approved March 18, 1878.

The said Ezekiel Rice appeared in court and before the judge thereof took an oath that he would faithfully discharge the duties of said office of treasurer and, together with his sureties, J. W. Church, Alex. Tinsley, Wm. Irvin, J. C. Gibbs, J. C. Howard, J. A. Stokes, S. D. Chatham, D. W. Jenigan, Jno. F. Rice, Jonathan Clark, M. Reno, J. H. Wright, T. E. Mann, E. A. Coppage, W. T. Morgan, and J. E. Mills, of Muhlenburgh county, signed, acknowledged, and delivered a bond to the Commonwealth of Kentucky stipulating for the faithful discharge of the duties of his said office of treasurer. The said bond and the said sureties thereon are hereby approved by this court. It is hereby ordered by this court that said bond be filed in the office of the clerk of this court.

Page 511.

Muhlenburgh county court met, pursuant to adjournment, on Wednesday, July 6th, 1881.

Present: Hon. J. C. Thompson, P. J.

It is ordered that the order of this court made and entered
651 on the 16th day of February, 1881, be so modified that the sheriff is directed to collect and that there is levied 10 cents on the one hundred dollars instead of 75 cents on the one hundred dollars, and the sheriff is directed to proceed to collect said sum.

Page 469.

At a call- county court began and held for Muhlenburgh county, at the court —, in Greenville, Ky., on Tuesday, the 8th day of February, 1881.

Present: Hon. J. C. Thompson, P. J.

This day Wiley S. Hay, a member of the funding board of Muhlenburgh county for district No. 2 (Boggess district), tendered his resignation, in writing, of said office. It is ordered by the court that said resignation be accepted and placed of record. A vacancy in the membership of said board having thus occurred, it is now ordered by this court that John A. Stokes, of Greenville, Ky., in district No. 2, be, and he is hereby, appointed a member of the funding board of Muhlenburgh county, in place of W. S. Hay, for said district No. 2, to hold said office for residue of the term for which said Hay was elected.

At a county court began and held for Muhlenburgh county,
652 at the court-house, in Greenville, Ky., on Monday, 28th day of January, 1884.
Present: John H. Morton, P. J.

Order Book No. 11, *Page* 88.

The resignation of J. B. Millard, a member of the funding board for Muhlenburgh county for district No. 1, was this day presented to the court in words and figures as follows:

MUHLENBURGH COUNTY, KY., *Sept. 5th*, 1883.

To the chairman and members of the Muhlenburgh funding board:

I herewith tender my resignation as a member of said board, to take effect immediately. I am the member from civil district No. 1, said county.

J. B. MILLARD.

Which said resignation is accepted by the court, to take effect on and from this date.

Page 89.

TUESDAY, *January 28th*, 1884.

Court met pursuant to adjournment.
Present: Hon. John H. Morton, P. J.

Whereas at the August election, 1882, being the day fixed by law for the election of the funding board of Muhlenburgh county by the qualified voters of the justice's districts of said county, there was a total failure in each of said districts to elect any member of said board; whereas J. B. Millard, who was a member of said board for justice's district No. 1 (South Carrollton), has tendered
653 to this court his resignation of said office, which is accepted; whereas by an act of the General Assembly of the Commonwealth of Kentucky entitled "An act to create a voting and justices of the peace district at Central City, in Muhlenburgh county," approved March 10, 1882, an additional justice's district, No. 7, in said county, was created and now exists and no member of said funding board for said district has been elected or appointed; and whereas by an act of the General Assembly of the Commonwealth of Kentucky entitled "An act to authorize and empower the county of Muhlenburgh to compromise and fund its outstanding bonded indebtedness, issue bonds, and levy and collect taxes to pay the same," approved March 18, 1878, it is provided that if said districts or any or either of them fail to elect, the county court shall appoint the member or members necessary to fill the board: Wherefore it is now hereby ordered by this court that the following-named citizens of Muhlenburgh county be, and they are hereby, appointed by this court members of the funding board of Muhlenburgh county in

and for the several justice's districts of said county, as follows, to wit:

In and for the justices of the peace district No. 1 (South
654 Carrollton) of Muhlenburgh county, Robert C. Grundy; in and for the justices of the peace district No. 2 (Boggess) of Muhlenburgh county, John E. Mills; in and for the justices of the peace district No. 3 (Court-House) of Muhlenburgh county, Alney E. Newman; in and for the justices of the peace district No. 4 (Paradise) of Muhlenburgh county, Gilbert V. Glenn; in and for the justices of the peace district No. 5 (Wild Cat) of Muhlenburgh county, William B. Whittaker; in and for the justices of the peace district No. 6 (Summers) of Muhlenburgh county, William Short; in and for the justices of the peace district No. 7 (Central City) of Muhlenburgh county, William Young.

It is ordered by this court that the above-named persons, to wit, Robert C. Grundy, John E. Mills, Alney E. Newman, Gilbert V. Glenn, William H. Whitaker, William Short, and William Young be, and they are hereby, appointed members of the funding board of Muhlenburgh county, each in and for the justices' district named in connection with his name, to act under and by virtue of said act of the General Assembly of the Commonwealth of Kentucky and until their successors are elected and qualified.

655 At a county court began and held for Muhlenburgh —, at the court-house, in Greenville, Ky., on Monday, the 30 day of March, 1885.

Present: Hon. *Hon.* J. H. Morton, judge.

Page 194.

This day, Wm. R. Stewart, a member of the funding board of Muhlenburgh for precinct No. 6 (Summers' precinct), — and tendered his resignation (in writing) of said office, which resignation was accepted by the court.

Page 213.

At a county court began and held for Muhlenburgh county, at the court-house, in Greenville, Ky., on Monday, the 25th day of May, 1885.

Present: Hon. J. H. Morton, judge.

Whereas the funding board of Muhlenburgh county at its regular meeting on the 19th day of May, 1885, adopted and passed the following resolution, to wit:

"Resolved by the funding board of Muhlenburgh county in regular session in the office of the county judge of said county, That to pay the accrued and accruing interest on the bonds issued and to be issued under authority of act entitled 'And act to authorize and empower the county of Muhlenburgh to compromise and fund its outstanding bonded indebtedness, issue bonds, and levy and
656 collect taxes to pay the same,' approved March 18, 1878, and to provide a sinking fund for the redemption or purchase of

said — issued under said act, the county court of said county is hereby authorized and directed to levy a tax upon all the real and personal estate in said county, including all amounts given under the equalization law subject to taxation under the general laws of this Commonwealth; said tax for the present year shall be one dollar on each one hundred dollars of said estate, including all amounts given under the equalization law, whether shown by the assessment-rolls for 1885 or otherwise:"

Now, in pursuance of said resolution and in exercise of the power and authority vested in this court by the above-entitled act of the General Assembly of the Commonwealth of Kentucky, it is hereby ordered by this court that, to pay the accrued and accruing interest on the bonds issued and to be issued under authority of said act and to provide a sinking fund for their redemption, an annual tax of one dollar on each one hundred dollars of the property or estate taxable is hereby levied and imposed by this court upon all
657 the real and personal estate in the said county of Muhlenburgh, including all amounts given in under the equalization law subject to taxation under the general laws of this Commonwealth, whether such estate be shown on the assessment-rolls for 1885 or otherwise.

STATE OF KENTUCKY,
County of Muhlenburgh, } *sct:*

I, W. T. Stiles, clerk of the Muhlenburgh county court, certify that the foregoing are true copies of the orders of the Muhlenburgh county court as taken from the records in my office.

Given under my hand, as clerk aforesaid, this 9th day of July, 1885.

W. T. STILES, *Clerk,*
By W. R. EAVES, *D. C.*

Muhlenburgh County Court, Sept., 1881.

Order Book No. 10, *Page* 531.

At a meeting of the funding board of Muhlenburgh county, Kentucky, held June 11th, 1878, at the office of J. C. Thompson, Esqr., in Greenville, Kentucky.

Present: J. C. Thompson, county judge; J. B. Millard, W. S. Hay, W. G. Jones, Eli Wooten, W. F. Ward, W. S. Humphrey, funding commissioners.

658 F. M. Allison was duly elected clerk *pro tem.*, or secretary.

W. S. Hay offered the following resolution, viz:

Resolved, we instruct our secretary to prepare a notice, and have same published in the Louisville Courier-Journal, stating the time at which the funding board of Muhlenburgh county will hold its regular meeting, and notifying the holders of Muhlenburgh county bonds that the board is now organized and ready to receive and consider propersitions looking to a compromise of the indebtedness of said county; which resolution was unanimously adopted.

On motion of W. S. Humphrey, the chairman of the board was appointed the custodian of the books, papers, &c., of said board. On motion of W. S. Hay, the board adjourned until the next regular meeting.

J. C. THOMPSON, *Chairman.*
F. M. ALLISON, *Secretary.*

GREENVILLE, KY., *June 18th*, 1878.

The funding board met pursuant to adjournment.

Present: J. C. Thompson, chairman; J. B. Millard, W. S. Hay, W. G. Jones, Eli Wooten, W. F. Ward, W. S. Humphrey.

659 The minutes of the last meeting were read and approved.

W. G. Jones was called to the chair and J. C. Thompson offered the following resolution, to wit:

J. C. Thompson read a letter from John M. Galway looking to compromise of 40 bonds claimed to be held by him against the county. Therefore be it resolved—

1. That said letter be filed as part of the proceedings of this board.

2. That the chairman of the board is hereby directed to correspond with said Galway and all others making similar inquiries, and enclose with his correspondence a copy of the act entitled An act to authorize Muhlenburgh county to compromise and fund its bonded indebtedness, issue bonds, and levy and collect taxes to pay the same.

3. That he inquire of said Galway and others what he or they will accept for his or their bonds in money and manner of payment, and what he or they will accept in bonds of the character described in said act.

4. That he request said Galway and others to meet us at our next regular meeting and submit any proposition he or they may desire to make.

Which resolution *were* adopted.

660 On motion of W. S. Hay, the board adjourned until its regular meeting.

J. C. THOMPSON, *Chairman.*

JULY 2, 1878.

The board met.

Present: J. C. Thompson, J. B. Millard, W. S. Hay, W. G. Jones, Eli Wooten, W. F. Ward, W. S. Humphrey.

No business of importance being called, the board adjourned.

J. C. THOMPSON, *Chairman.*

JULY 16TH, 1878.

The board met.

Present: J. B. Millard, W. S. Hay, W. G. Jones, Eli Wooten, W. F. Ward, W. S. Humphrey.

W. G. Jones was called to the chair and J. E. Wooten elected secretary.

Three letters were read, but not filed or acted upon.
On motion, the board adjourned.

J. E. WOOTEN, *Secretary.*

AUGUST 20TH, 1878.

The board met.
Present: J. C. Thompson, J. B. Millard, W. S. Hay, W. G. Jones, Eli Wooten, W. F. Ward, W. S. Humphrey.
On motion, the board adjourned.

J. C. THOMPSON, *Chairman.*

AUGUST 3RD, 1878.

The board met.
Present: J. C. Thompson, J. B. Millard, W. S. Hay, W. G. Jones, Eli Wooten, W. F. Ward, W. S. Humphrey.

661 No business being *being* called, on motion, the board adjourned to meet on the 3d Tuesday in September, 1878.

J. C. THOMPSON, *Chairman.*

OCTOBER 15TH, 1878.

The board met.
Present: J. C. Thompson, J. B. Millard, W. S. Hay, W. G. Jones, Eli Wooten, W. F. Ward, W. S. Humphrey.
On motion, the board adjourned.

J. C. THOMPSON, *Chairman.*

NOVEMBER 5TH, 1878.

The board met.
Present: J. C. Thompson, J. B. Millard, W. S. Hay, W. G. Jones, Eli Wooten, W. F. Ward, W. S. Humphrey.
On motion, the board adjourned.

J. C. THOMPSON, *Chairman.*

NOVEMBER 19TH, 1878.

The board met.
Present: J. C. Thompson, J. B. Millard, W. S. Hay, W. G. Jones, Eli Wooten, W. F. Ward, W. S. Humphrey.
On motion, the board adjourned.

J. C. THOMPSON, *Chairman,*

DECEMBER 17TH, 1878.

The board met.
Present: J. C. Thompson, J. B. Millard, W. S. Hay, W. G. Jones, Eli Wooten, W. F. Ward, W. S. Humphrey.
On motion, the board adjourned.

J. C. THOMPSON, *Chairman.*

662 JANUARY 7TH, 1879.

At a meeting of the funding board of Muhlenburgh county, held at the office of J. C. Thompson, on the 7th day of January, 1879.

Present: J..C. Thompson, J. B. Millard, W. S. Hay, W. G. Jones, Eli Wooten, W. F. Ward, W. S. Humphrey.

No business being called, the board adjourned.

Att.: J. C. THOMPSON, *Chairman.*

At a meeting of the funding board, held at the office of J. C. Thompson, on the 21st day of January, 1879.

Present: J. C. Thompson, J. B. Millard, W. S. Hay, W. G. Jones, Eli Wooten, W. F. Ward, W. S. Humphrey.

On motion, the board adjourned.

Att.: J. C. THOMPSON, *Chairman.*

At a meeting of the funding board, held at the office of J. C. Thompson, on the 4th day of February, 1879.

Present: J. C. Thompson, J. B. Millard, W. S. Hay, Eli Wooten, W. F. Ward, W. S. Humphrey.

No business of importance being called, on motion, the board adjourned.

Att.: J. C. THOMPSON, *Chairman.*

At a meeting of the funding board, held at the office of J.
663 Thompson, on the 18th day of February, 1879.

Present: J. C. Thompson, J. B. Millard, W. G. Jones, W. S. Hay, Eli Wooten, W. F. Ward, W. S. Humphrey.

No business of importance being called, the meeting, on motion, adjourned.

Att.: J. C. THOMPSON, *Chairman.*

MARCH 4TH, 1879.

At a meeting of the funding board, held at the office of J. C. Thompson, on the 4th day of March, 1879.

Present: J. C. Thompson, J. B. Millard, W. S. Hay, W. G. Jones, W. F. Ward, W. S. Humphrey.

W. S. Hay moved the following resolution:

Resolved, That the board make no offer of compromise unless the same shall be made by the unanimous consent of the board.

The yeas and nays being called, the vote stood as follows, to wit:

Yeas—Thompson, Millard, Hay, Jones, Humphrey.

Nays—W. F. Ward.

The resolution was declared adopted.

W. S. Hay moved that the board adjourn *sine die.*

The yeas and nays being called, the vote stood as follows, to wit:

Yeas—Thompson, Millard, Hay, Jones, Ward.

Nays—Humphrey.

664 Upon which the *the* board was declared adjourned.

Att.: J. C. THOMPSON, *Chairman.*

MAY 20TH, 1879.

A- a meeting called by the chairman, the board met on the 20th day of May, 1879.

Present: J. C. Thompson, J. B. Millard, W. S. Hay, W. G. Jones, Eli Wooten, W. F. Ward, W. S. Humphrey.

W. S. Hay — that resolution No. 1, passed on the 4th day of March, 1879, be re-cinded, which was unanimously adopted.

W. F. Ward moved that the editor of the Echo be invited to attend the meetings of the board, which was adopted.

W. G. Jones moved the adoption of the following resolution, to wit:

Resolved, That this board hereby propose to holders of Muhlenburgh county bonds and coupons that we are willing to compromise the indebtedness of Muhlenburgh county as follows, to wit: That we will issue the bonds of Muhlenburgh county to the amount of thirty per cent. of the indebtedness of said county and deliver them in exchange for the bonds and coupons of said county now outstanding.

W. F. Ward moved to substitute 25 per cent. in lieu of 30
665 per cent.; and, the yeas and nays being called on the substitute, the vote stood as follows, to wit:

Nays—Thompson, Millard, Hay, Jones.

Yeas—Wooton, Ward, Humphrey.

The vote was then taken upon the original resolution; and, the yeas and nays being called, the vote stood as follows:

Yeas—Thompson, Millard, Hay, Jones.

Nays—Wooton, Ward, Humphrey.

The resolution was declared adopted.

W. S. Hay moved that the chairman and W. S. Humphrey be appointed a committee to publish the above resolution by corresponding with the bondholders and by publishing in the Echo and Courier-Journal.

On motion, the board adjourned.

Att: J. C. THOMPSON, *Chairman.*

JUNE 3RD, 1879.

The board met.

Present: J. C. Thompson, J. B. Millard, W. S. Hay, W. G. Jones, W. F. Ward, W. S. Humphrey.

No business of importance being called, it is ordered that the board adjourn.

Att: J. C. THOMPSON, *Chairman*

JUNE 17TH, 1879.

The board met.

Present: J. B. Millard, W. S. Hay, W. G. Jones, Eli Wooton, W. F. Ward, W. S. Humphrey.

W. S. Hay was called to the chair and Eli Wooton appointed secretary.

666 W. S. Humphrey moved the adoption of a resolution, which was filed and marked No. 1.

On motion, it was agreed the consideration of said motion be passed for the present, and on motion the board adjourned.

ELI WOOTON, *Secretary.*

JULY 1ST, 1879.

Board met pursuant to adjournment.

Present: J. C. Thompson, J. B. Millard, W. S. Hay, Eli Wooten, W. F. Ward, W. S. Humphrey.

No business of importance being called, on motion, the board adjourned.

Att.: J. C. THOMPSON, *Chairman.*

JULY 15TH, 1879.

The board met pursuant to adjournment.

Present: J. C. Thompson, J. B. Millard, W. S. Hay, W. G. Jones, W. F. Ward, W. S. Humphrey.

No business being called, the board, on motion, adjourned.

Att.: J. C. THOMPSON, *Chairman.*

AUGUST 19TH, 1879.

The board met.

Present: J. C. Thompson, J. B. Millard, W. S. Hay, W. G. Jones, W. F. Ward, W. S. Humphrey.

No business being called, the board, on motion, adjourned.

Att.: J. C. THOMPSON, *Chairman.*

667 SEPTEMBER 2ND, 1879.

The board met.

Present: J. C. Thompson, W. S. Hay, W. F. Ward, W. S. Humphrey, W. G. Jones.

No business being called, on motion, the board adjourned.

Att.: J. C. THOMPSON, *Chairman.*

SEPTEMBER 19TH, 1879.

The board met.

Present: J. C. Thompson, J. B. Millard, W. S. Hay, Eli Wooton, W. F. Ward, W. S. Humphrey.

On motion, the board adjourned to meet on the 1st Tuesday in November, 1879.

Att.: J. C. THOMPSON, *Chairman.*

The board met Nov. 4th, 1879.

Present: J. C. Thompson, J. B. Millard, W. S. Hay, W. G. Jones, W. F. Ward.

On motion, the board adjourned.

J. C. THOMPSON, *Chairman.*

NOVEMBER 17TH, 1879.

The board met.

Present: J. C. Thompson, J. B. Millard, W. S. Hay, W. G. Jones, W. F. Ward.

W. G. Jones moved the following resolution, to wit:

Resolved, That the chairman of this board be, and he is hereby, authorized to go to Louisville, Kentucky, and make a contract with

some suitable person to negotiate with the bondholders of
668 Muhlenburgh county bonds, such contract to be subject to acceptance or rejection by this board.

The yeas and nays being called on such resolution, the vote stood as follows:

Yeas—Thompson, Millard, Hay, Jones.

Nays—W. F. Ward.

The resolution was declared adopted.

On motion, the board adjourned.

Att.: J. C. THOMPSON, *Chairman.*

DECEMBER 2ND, 1879.

The board met.

Present: J. C. Thompson, J. B. Millard, W. S. Hay, W. G. Jones, W. F. Ward, W. S. Humphrey.

W. S. Hay moved the adoption of the following resolution, to wit:

Resolved, That the contract reported by the chairman and signed by John W. & D. S. Green be adopted & signed by the members of this board.

The nays and yeas being called for by W. F. Ward, the vote stood as follows:

Yeas—Thompson, Millard, Hay, Jones.

Nays—Ward, Humphrey.

The resolution was declared adopted.

W. S. Hay moved the following resolution:

Resolved, That J. C. Thompson, the county judge, is hereby authorized and directed to appropriate any money unappropriated belonging to the county to the amount of $50, to be expended in advertising propositions to the bondholders.

669 The yeas and nays being called for by W. S. Humphrey, the vote stood as follows:

Yeas—Thompson, Millard, Hay, Jones.

Nays—Ward, Humphrey.

The resolution was declared adopted.

On motion, the board adjourned.

Att: J. C. THOMPSON, *Chairman.*

DECEMBER 16TH, 1879.

The board met.

Present: J. B. Millard, W. S. Hay, W. F. Ward, W. S. Humphrey.

No business of importance being called, the board adjourned.

JANUARY 20TH, 1880.

The board met.

Present: J. C. Thompson, J. B. Millard, W. S. Hay, W. G. Jones, W. S. Humphrey, W. F. Ward.

On motion, it was ordered that W. G. Jones be appointed a committee to go to Louisville and contract *for* some one for the printing of bonds to be used in funding the indebtedness of Muhlenburgh county.

On motion, the meeting adjourned until February 19th, 1880.

J. C. THOMPSON, *Chairman.*

FEBRUARY 19TH, 1880.

The board met pursuant to adjournment.

Present: J. C. Thompson, J. B. Millard, W. S. Hay, W. G.
670 Jones, W. F. Ward, W. S. Humphrey.

On motion of W. S. Humphrey, the report of the committee, W. G. Jones, appointed to go to Louisville and contract for the printing of our bonds, was received and adopted and committee discharged.

On motion, it is ordered that J. C. Thompson be, and is, appointed a committee to correspond with some book-binding house for the purpose of having such books as may be necessary for the use of the board and the treasurer and clerk — and report to the next meeting, and to correct proof-sheets of the bonds.

On motion, the board adjourned.

Att.: J. C. THOMPSON, *Chairman.*

MARCH 2ND, 1880.

The board met.

Present: J. C. Thompson, J. B. Millard, W. S. Hay, W. G. Jones, W. S. Humphrey.

J. C. Thompson, a committee to correspond with publishers in regard to books needed by the board, reported that Jno. P. Morton & Co. would furnish the books at $37.20, and, on motion, it is directed to have the books made.

On motion, it is ordered that the members of the board execute a note for $195.40 to pay for photographing the new bond ;
671 $125.00, $25.00, Green Bros. ; $8.50 to M. C. Hay, and 37.20 to John P. Morton & Co. for books ; and said notes were executed by the members present and placed in the hands of J. C. Thompson, and he is ordered to draw the money and pay said sums and take receipts for same.

On motion, the board then adjourned.

Att.: J. C. THOMPSON, *Chairman.*

MARCH 16TH, 1880.

The board met.

Present: J. C. Thompson, J. B. Millard, W. S. Hay, W. S. Humphrey.

On motion of W. S. Hay, it is ordered that the county judge and clerk sign and deliver to our agents, John W. and D. S. Green, 200 bonds of the denomination of $50.00 and 100 of the denomination of $100.00 and 25 of the denomination of $500.00, to be used in funding our bonded debt, and that they are authorized to insert an additional advertisement in the Courier-Journal to the amount of $25.

On motion, the board adjourned.

Att.: J. C. THOMPSON, *Chairman.*

APRIL 6TH, 1880.

The board met.

Present: J. C. Thompson, J. B. Millard, W. S. Hay, W. G. Jones, W. F. Ward, W. S. Humphrey.

672 On motion, it is ordered that members of the board present execute a note, payable to bearer, to raise money to pay balance of the amount of Chas. W. German for printing bonds, and that J. C. Thompson have same cashed and forward the money to the printers.

On motion, the board adjourned.

Att.: J. C. THOMPSON, *Chairman.*

APRIL 20TH, 1880.

The board met.

Present: J. C. Thompson, J. B. Millard, W. S. Hay, W. G. Jones, W. F. Ward, W. S. Humphrey.

No business being called, the board adjourned.

Att.: J. C. THOMPSON, *Chairman.*

MAY 4TH, 1880.

The board met.

Present: J. C. Thompson, J. B. Millard, W. S. Hay, W. F. Ward, W. G. Jones, W. S. Humphrey.

No business being called, the board adjourned.

Att.: J. C. THOMPSON, *Chairman.*

JUNE 5TH, 1880.

The board met.

Present: J. B. Millard, W. F. Ward, W. S. Humphrey.

No business being called, the board adjourned.

673 JUNE 14TH, 1880.

The board met.

Present: J. C. Thompson, J. B. Millard, W. G. Jones, W. F. Ward, Eli Wooton, W. S. Humphrey.

On motion, W. G. Jones was called to the chair, and J. C. Thompson moved the adoption of the following resolution, to wit:

Resolved, That from the 15th day of July until the 1st day of September, 1880, the funding board will compromise with the holders of Muhlenburgh county bonds by issuing new bonds, under the provisions of the funding act, at 50 per cent. of the face value of said bonds without estimating the past-due coupons or interest on same.

W. F. Ward moved the adoption of the following as a substitute for said resolution:

Resolved, That this board hereby agree to compromise with the holders of Muhlenburgh county bonds by issuing to them new bonds, under the provisions of the funding act, to the amount of 25 per cent. of the old bonds and coupons which shall be due September 1st, 1880, and not to embrace interest on past-due coupons.

The question being called upon the adoption of the substitute, and a division being called, the vote stood thus:

Yeas—Ward, Humphrey.

Nays—Thompson, Millard, Jones.

674 The chair decided that the substitute failed for want of a majority.

The question occurring upon the original resolution & the yeas and nays being called, the vote stood thus:

Yeas—Thompson, Jones.

Nays—Millard, Ward, Wooten, Humphrey.

The resolution was declared defeated.

W. F. Ward moved the adoption of the following resolution, which was adopted, to wit:

Resolved, That the funding board so far modify the offer heretofore made to the holders of the Muhlenburgh county — as to declare that on all bonds not compromised by the 1st of September, 1880, the interest on said bonds will not be computed only to that date when offered after that date for compromise.

On motion of W. F. Ward, it is ordered that *that* the board will not authorize the county judge to — any tax to pay — unless the old bonds compromised shall be delivered to the board.

On motion, the board adjourned,

Att.: J. C. THOMPSON, *Chairman.*

JULY 20TH, 1880.

The board met.

Present: W. S. Hay, J. B. Millard, W. G. Jones, W. F. Ward, W. S. Humphrey, J. E. Wooton.

675 The chairman, J. C. Thompson, being absent, W. G. Jones was elected chairman and Eli Wooton secretary.

On motion, the board adjourned.

J. E. WOOTON, *Sec't'y.*

AUGUST 3RD, 1880.

The board met.

Present: J. C. Thompson, W. G. Jones, J. B. Millard, W. F. Ward, W. S. Humphrey.

On motion, it is ordered that W. G. Jones and W. S. Humphrey be appointed a committee to have the resolutions published concerning the compromise of our bonds.

On motion, board adjourned.

Att.: J. C. THOMPSON, *Chairman.*

SEPTEMBER 7TH, 1880.

The board met.

Present: J. C. Thompson, J. B. Millard, Eli Wooton, W. F. Ward, & W. S. Humphrey.

On motion, board adjourned.

J. C. THOMPSON, *Chairman.*

OCTOBER 19TH, 1880.

The board met.

Present: J. C. Thompson, J. B. Millard, W. S. Hay, W. F. Ward, W. S. Humphrey.

On motion, board adjourned.

Att.: J. C. THOMPSON, *Chairman.*

NOVEMBER 2ND, 1880.

The board met.

676 Present: J. C. Thompson, J. B. Millard, W. F. Ward, W. S. Humphrey.

On motion, board adjourned.

J. C. THOMPSON, *Chairman.*

NOVEMBER 16TH, 1880.

The board met.

Present: J. C. Thompson, W. S. Hay, W. F. Ward, W. H. Humphrey.

The board, on motion, adjourned.

J. C. THOMPSON, *Chairman.*

DECEMBER 21ST, 1880.

The board met.

Present: J. C. Thompson, W. S. Hay, W. F. Ward, W. S. Humphrey.

The board, on motion, adjourned.

J. C. THOMPSON, *Chairman.*

STATE OF KENTUCKY, *County of Muhlenburgh,* } *sct:*

I, W. T. Stiles, clerk of the county court in and for the county aforesaid, certify that the foregoing is a true copy of the proceedings of the funding board of Muhlenburgh county as appears of record in my office.

Given under my hand, as clerk of the court aforesaid, this 9th day of May, 1885.

W. T. STILES, *Clerk,*
By W. R. EAVES, *D. C.*

677 COMMONWEALTH OF KENTUCKY, *Muhlenburgh County,* } *sct:*

We, John H. Morton, presiding judge; W. T. Stiles, clerk of the county court, and W. B. James, com'r, duly authorized to compare the poll books for the county of Muhlenburgh, do certify that — an election held in said county on the 4th day of August, 1884,

Martin Kittinger was duly elected to fill the office of funding board commissioner for district No. 1.

J. H. MORTON,
P. J. M. C. C.
W. T. STILES,
C. M. C. C.
W. B. JAMES,
Com'r M. C.

A copy.
Attest:

W. T. STILES, *Clerk*,
By W. R. EAVES, *D. C.*

COMMONWEALTH OF KENTUCKY, *Muhlenburgh County*, } *sct:*

We, John H. Morton, presiding judge; W. T. Stiles, clerk of the county court, and W. B. James, com'r, duly authorized to compare the poll books for the county of Muhlenburgh, do certify that at an election held in said county on the 4th day of August, 1884, J. E. Mills was duly elected to fill the office of funding board commissioner for district No. 2.

J. H. MORTON,
P. J. M. C. C.
678 W. T. STILES,
C. M. C. C.
W. B. JAMES,
Com'r M. C.

A copy.
Attest:

W. T. STILES, *Clerk*,
By W. R. EAVES, *D. C.*

COMMONWEALTH OF KENTUCKY, *Muhlenburgh County*, } *sct:*

We, John H. Morton, presiding judge; W. T. Stiles, clerk of the county court, and W. B. James, com'r, duly authorized to compare the poll books for the county of Muhlenburgh, do certify that at an election held in said county on the 4th day of August, 1884, A. E. Newman was duly elected to fill the office of funding board commissioner for district No. 3.

J. H. MORTON,
P. J. M. C. C.
W. T. STILES,
C. M. C. C.
W. B. JAMES,
Com'r M. C.

A copy.
Attest:

W. T. STILES, *Clerk*,
By W. R. EAVES, *D. C.*

COMMONWEALTH OF KENTUCKY, } *sct:*
Muhlenburgh County, }

We, John H. Morton, presiding judge; W. T. Stiles, clerk of the county court, and W. B. James, com'r, duly authorized to
679 compare the poll books for the county of Muhlenburgh, do certify that at an election held in said county on the 4th day of August, 1884, S. M. Weir was duly elected to fill the office of funding board commissioner for district No. 4.

J. H. MORTON,
P. J. M. C. C.
W. T. STILES,
C. M. C. C.
W. B. JAMES,
Com'r M. C.

A copy.

Attest:

W. T. STILES, *Clerk,*
By W. R. EAVES, *D. C.*

COMMONWEALTH OF KENTUCKY, } *sct:*
Muhlenburgh County, }

We, John H. Morton, presiding judge; W. T. Stiles, clerk of the county court, and W. B. James, com'r, duly authorized to compare the poll books for the county of Muhlenburgh, do certify that at an election held in said county on the 4th day August, 1884, W. H. Whitaker was duly elected to fill the office of funding board commissioner for district No. 5.

J. H. MORTON,
P. J. M. C. C.
W. T. STILES,
C. M. C .C.
W. B. JAMES,
Com'r M. C.

A copy.

Attest:

W. T. STILES, *Clerk,*
By W. R. EAVES, *D. C.*

680 COMMONWEALTH OF KENTUCKY, } *sct:*
Muhlenburgh County, }

We, John H. Morton, presiding judge; W. T. Stiles, clerk of the county court, and W. B. James, com'r, duly authorized to compare the poll pooks for the county of Muhlenburgh, do certify that at an election held in said county on the 4th day of August, 1884, Wm. R.

Stewart was duly elected to fill the office of funding board commissioner for district No. 6.

J. H. MORTON,
P. J. M. C. C.
W. T. STILES,
C. M. C. C.
W. B. JAMES,
Com'r M. C.

A copy.
Attest:

W. T. STILES, *Clerk*,
By W. R. EAVES, *D. C.*

COMMONWEALTH OF KENTUCKY,
Muhlenburgh County, } *sct:*

We, John H. Morton, presiding judge; W. T. Stiles, clerk of the county court, and W. B. James, com'r, duly authorized to compare the poll books for the county of Muhlenburgh, do certify that at an election held in said county on the 4th day of August, 1884, Wm. Young was duly elected to fill the office of funding board commissioner for district No. 7.

J. H. MORTON,
P. J. M. C. C.
W. T. STILES,
C. M. C. C.
W. B. JAMES,
Com'r M. C.

A copy.
Attest;

W. T. STILES, *Clerk*,
By W. R. EAVES, *D. C.*

681 DISTRICT OF KENTUCKY:

I, Samuel B. Crail, clerk of the circuit court of the United States for the district of Kentucky, at Louisville, do hereby certify that the foregoing 680 pages contain a true and complete transcript of the record of the proceedings had in the court in the case mentioned in the caption hereof.

Seal 6th Circuit Court, Ky. Dis., U. S. of America.

Witness my hand and the seal of said court this 15th day of September, 1877.

SAM'L B. CRAIL, *Clerk.*

Endorsed on cover: Kentucky C. C. U. S. No. 158. R. H. Brown *et al.*, appellants, *vs.* Charles W. Trousdale and James Alexander. Filed October 8, 1887.

In the Supreme Court of the United States.

R. H. BROWN *et al.*, Appellants, *vs.* CHAS. W. TROUSDALE & JAMES ALEXANDER, Appellees.	}	No. 158. Oct. Term, 1890.

It is agreed that the answers of appellees to interrogatories hereto attached may be made a part of the record of this cause the same as if they had been originally copied and printed herein.

This 13 January, 1891.

T. W. BROWN,
For Appellants.
D. M. RODMAN,
Att'y for Appellees.

Answers of Chas. W. Trousdale to the interrogatories filed by complainants (plaintiffs) in the case of R. H. Brown *et als. vs.* Alexander Tinsley, in the United States circuit court, district of Kentucky.

Answer 1. I was born and raised in the State of Tennessee; am now about forty-seven years of age. I live in the town of Gallatin, county of Sumner, State of Tennessee.

Ans. 2. I had deposited the July, 1885, coupons of the compromise Muhlenburg county bonds in the American National Bank, at Nashville, Tennessee, for collection. I did this some time in July, 1885. A short time thereafter I was informed by the bank that said coupons had been returned unpaid, and that there was a suit about the bonds. I then saw a notice in one of the Nashville papers that a bill had been filed in the Muhlenburg circuit court. The above is the first information I had about the suit.

Ans. 3. I am really in good faith a citizen of Tennessee. I am not temporarily in said State for the purpose of playing in this case the roll of a citizen of another State in order to escape the jurisdiction of the Kentucky courts for the benefit of other holders of Muhlenburg county bonds or for my own benefit. I have voted frequently in the State of Tennessee, and have never voted anywhere else. My age is forty-seven years. I have exercised all the rights of citizenship of Tenn. incident to a *bona fide* resident and citizenship of said State, including voting and paying taxes. As before stated, I am a native of Tennessee, and have never been a resident of any other State.

Ans. 4. I obligated myself to pay 20 % of $210.00 of July coupons on my bonds of the fees to counsels in this suit for the defense by subscribing my name to an obligation which reads as follows:

"LOUISVILLE, KY., *Aug-st 6th*, 1885.

Whereas a suit has been filed in the Muhlenburg circuit court by certain tax-payers of said county of Muhlenburg, and an injunction has been obtained in said suit enjoining the collection of the tax levied by the county judge to meet the interest coupons due July 1st, 1885, on the new bonds: Now, for the purpose of defending said suit in said court and obtaining a dissolution of said injunction, we agree to pay to Messrs. Rodman and Brown and M. C. Hay and Judge W. Lindsay, our attorneys, twenty (20 %) per cent. of the July coupons due us when said coupons are collected."

Rodman and Brown, M. C. Hay, and Wm. Lindsay are my attorneys in this cause. I employed them about the date of the above copied contract.

Ans. 5. My bonds were issued under what is known as the funding act, and are of the following numbers and denominations:

Since answering the above I find that I have mislaid the memoranda of the numbers and denominations of said bonds. They (the bonds) are in my box in the vault of the American National Bank of Nashville, Tennessee. I will, in a short time, go to Nashville and get a list of the numbers and denominations and forward them to my attorneys, Rodman and Brown, of Louisville, Ky., to be filed as a part of my answer.

Ans. 6. I was advised by my counsel, whom I had already employed to defend the case in the Muhlenburg court, that it was advisable and important to remove the case to the U. S. circuit court at Louisville. I had already given my attorneys a power of attorney to act for me in the case, and I was governed by their advice in consenting to be a party to remove the cause to the circuit court of the U. S. I was not relieved from the payment of my part of the counsel fees and the costs, but as I had to give a cost bond, I was indemnified as to all the costs except my own. My appearance in this cause was not made collusively with the bondholders and citizens of Kentucky to enable them to avoid the jurisdiction of the Kentucky courts. My appearance in this case was made on my own behalf and on the advice of my counsel. I had for several years been thinking of bringing suit on the coupons of the old bonds, but concluded to fund the bonds. It was my intention to make some effort to collect my interest on these bonds and my appearance in this case would have been regulated or procured by the advice of my attorneys already employed and not by the advice or on behalf of other bondholders.

Ans. 7. I would have been governed by the advice of my counsel, who had already been employed, and if I had been so advised by them, I think I would have undertaken the case alone.

Ans. 8. The bonds that I now hold are the new bonds which I received for old bonds which I have held for fourteen or fifteen years. I think I paid 85c. on the dollar for the old bonds, and I got them from A. A. Gordon, in Louisville, Ky., who was then sec'y of the Elizabethtown & Paducah railroad. I am not related to any of the bondholders who are citizens of Kentucky, that I know of. I do not know who holds most of the Muhlenburg Co. bonds.

I certainly did not get these bonds for the purpose of playing the part of a citizen of another State in aid of the Kentucky bondholders.

Ans. 9. I have taken the advice of my attorneys in regard to my rights and duties in this case at every stage of it, including my answer to these interrogatories.

CHAS. W. TROUSDALE.

Answers of Jas. Alexander to the interrogatories filed by complainants (plaintiffs) in the case of R. H. Brown *et als. vs.* Alexander Tinsley, in the U. S. circuit court, district of Kentucky.

Ans. 1st. I was born and raised in the State of Tennessee, and am about seventy-two years of age; I live in the town of Gallatin, county of Sumner, State of Tennessee.

Ans. 2. Mr. C. W. Trousdale first called my attention to a notice in one of the Nashville papers that a bill had been filed in the Muhlenburg circuit court. This was the first information I had about the suit.

Ans. 3. I am really in good faith a citizen of Tennessee. I was born and raised here, and have never been a resident of any other State. I am not temporarily in this State for the purpose of playing in this case the roll of a citizen of another State in order to escape the jurisdiction of the Kentucky courts for the benefit of other holders of Muhlenburg county bonds or for my own benefit. I have often voted in the State of Tennessee, and have never voted in any other State. My age is seventy-two years. I have exercised all the rights of citizenship in Tennessee incident to a *bona fide* resident and citizenship of said State, including voting and paying taxes. As before stated, I am a native of Tennessee, and have never been a resident of any other State.

Ans. 4. The following is my obligations for counsel fees. See a copy filed, "Exhibit A" to my answer. Rodman & Brown, M. C. Hay, and Wm. Lindsay are my attorneys in this cause. I don't remember the time, or date rather, that I employed them.

Ans. 5. The numbers and denominations of the bonds I hold are as follows:

One bond for $500.00, No. 168; nine bonds for $100.00 each, Nos. respectively as follows: 939, 946, 930, 705, 949, 931, 1074, 623, 1253. These are the bonds originally issued. They were in my possession

when I swore to and filed my petition to become a party defendant to this cause.

Ans. 6. I was applied to to become a party defendant to the suit in the circuit court of Muhlenburg county, and the contract, a copy of which is filed, was presented to me for my signature. I did not sign it at the time, but promised to attend to it when I went to Louisville. I was afterward advised by my counsel that it was important that the suit be removed to the U. S. court, at Louisville, and acting under his advice I filed my petition for the removal of the cause. I am bound for my part of the counsel fees, as appears by contract on file. My appearance in this cause was not made collusively with the bondholders of the State of Ky. to enable them to avoid the jurisdiction of the Kentucky courts. My appearance was made at the instance and on the advice of my attorneys.

Ans. 7. If my counsel had have advised me to bring the suit I certainly would have done so alone—that is, I mean that I would have undertaken to have defended the suit.

Ans. 8. I became the owner of the bonds mentioned in my petition ten or twelve years, or possibly fourteen years, ago. I don't now recollect what I paid for them. I bought them in Louisville, Ky., and paid the then market price. Some I bought of A. A. Gordon, the then sec'y of the Elizabethtown & Paducah railroad, and I may have bought some from others whom I do not now remember. I have no knowledge of being related to any of the Kentucky bondholders, and I do not know where most of the Muhlenburg county bonds are held. I did not get the bonds which I hold for the purpose of enabling me to play the part of a citizen of another State in aid of the citizen bondholders of Ky.

Ans. 9. I have had advice and instructions from my counsels as to all my actions in this case, including my answers to these interrogatories.

JAMES ALEXANDER.

STATE OF TENNESSEE, }
County of Sumner. }

I, G. N. Guthrie, a notary public in and for said State and county, do certify that the foregoing answers of Chas. W. Trousdale and Jas. Alexander to the annexed interrogatories were made before me, at my office, in Gallatin, Tennessee, on the 25th day of Sept., 1885; that said witnesses were each first sworn by me that the evidence they should give in their answers should be the truth, the whole truth, and nothing but the truth; that the answers of each witness were written by me in the presence of the witness, read to, and subscribed by him in my presence.

[SEAL.] Witness my hand and seal of office, at office, in Gallatin, Tenn., this 25th day of Sept., 1885.

G. N. GUTHRIE,
N. P., Sumner Co., Tenn.

"EXHIBIT A" TO JAS. ALEXANDER'S ANSWERS.

Whereas R. H. Brown and other tax-payers of Muhlenburg county, in the State of Kentucky, claiming to represent seven hundred of the tax-payers of said county, have filed a suit in Muhlenburg circuit court, in which they claim that the whole of the original issue of bonds of said county in payment of its subscription to the Elizabethtown and Paducah Railroad Company are void, in the hands of the present holders, on the ground that the act of the Kentucky Legislature under which they are issued is unconstitutional, and for other alleged causes; also, that the bonds issued by said county, known as the compromise bonds, are void because of the alleged unconstitutionality of the refunding act under which they are assessed; and whereas in said suit the plaintiffs have obtained an injunction enjoining the sheriff of Muhlenburg county and his deputies from collecting the tax levied by the county judge of said county to meet the interest and principal of the compromise bonds and enjoining the said county judge from making any further levies to meet said indebtedness; and whereas Messrs. Rodman & Brown, att's-at-law, of Louisville, Ky., and M. C. Hay, att'y-at-law at Greenville, Ky., and Judge W. Lindsay, of Frankfort, Ky., have been selected by some of the holders of the old and new issue of bonds of said county as attorneys to defend the said suit of tax-payers, and to obtain the discharge and dissolution of said injunction; and whereas it is contemplated that the said action will be appealed by the unsuccessful party in the court below, either to the court of appeals of Kentucky or to the Supreme Court of the United States, so as to finally and effectually determine the question of the validity of said bonds; and whereas said attorneys have agreed, in case of an appeal of said action to either of said Supreme Courts, to associate with themselves such eminent counsel as will insure an able and skillful presentation of the cause of the bondholders:

Now, therefore, in consideration of the services to be rendered in said litigation, we severally agree to pay to said attorneys a sum equal to 20 % on the face of old bonds, payable in cash or one year's interest from old bonds held by us and set opposite our respective names, payable in said coupons; which said fee shall be due and payable upon the final determination of said litigation in favor of the bondholders. We are not to pay any fee in case said litigation should be adverse to the bondholders, or any cost.

Witness our hands this 13th day of August, 1885.

Names.	Am't coupons.

To be paid in coupons; ninety-eight dollars in coupons of the old issue of bonds.

JAMES ALEXANDER.

DISTRICT OF KENTUCKY, *ss:*

I, Samuel B. Crail, clerk of the circuit court of the United States

for the district of Kentucky, do hereby certify that the foregoing ten pages, this included, contain a true copy of the answers to the interrogatories propounded to James Alexander & Charles W. Trousdale in the case of R. H. Brown *et al. vs.* Alexander Tinsley *et al.*, as the same remains on file in my office.

Seal 6th Circuit Court, Ky. Dis., U. S. of America.

Given under my hand & seal of said court this 7th day of January, 1891.

SAM'L B. CRAIL, *Clerk*,
By HENRY F. CASSIN, *D. C.*

[Endorsed:] Supreme Court U. S. 1890, October term. No. 158. R. H. Brown *et al.*, app'ts, *vs.* Chas. W. Trousdale *et al.* Stipulation and addition to record.

[Stamped:] Office Supreme Court U. S. Filed Jan. 14, 1891. James H. McKenney, clerk.

In the Supreme Court of the United St

R. H. BROWN *et al.*, Appellants,

vs.

ALEXANDER TINSLEY, *et al.*, improperly indorsed on printed Record as Charles W. Trousdale and James Alexander, Appellees.

No. 158.

BRIEF AND ARGUMENT FOR APPELLANTS.

T. W. BROWN,
Attorney for Appellants.

for the district of Kentucky, do hereby certify that the foregoing ten pages, this included, contain a true copy of the answers to the interrogatories propounded to James Alexander & Charles W. Trousdale in the case of R. H. Brown *et al. vs.* Alexander Tinsley *et al.*, as the same remains on file in my office.

Seal 6th Circuit Court, Ky. Dis., U. S. of America.

Given under my hand & seal of said court this 7th day of January, 1891.

SAM'L B. CRAIL, *Clerk*,
By HENRY F. CASSIN, *D. C.*

[Endorsed:] Supreme Court U. S. 1890, October term. No. 158. R. H. Brown *et al.*, app'ts, *vs.* Chas. W. Trousdale *et al.* Stipulation and addition to record.

[Stamped:] Office Supreme Court U. S. Filed Jan. 14, 1891. James H. McKenney, clerk.

FILED
JAN 22 18
JAMES. H. McKENN
CLE

In the Supreme Court of the United States.

R. H. BROWN *et al.*, Appellants,

vs.

ALEXANDER TINSLEY, *et al.*, improperly indorsed on printed Record as Charles W. Trousdale and James Alexander, Appellees.

No. 158.

BRIEF AND ARGUMENT FOR APPELLANTS.

T. W. BROWN,
Attorney for Appellants.

IN THE

Supreme Court of the United States.

R. H. BROWN *et al.*, Appellants,

vs.

ALEXANDER TINSLEY *et al.*, improperly indorsed on printed Record as Charles W. Trousdale and James Alexander, Appellees.

No. 158.

BRIEF AND ARGUMENT FOR APPELLANTS.

ERRORS ASSIGNED.

The questions presented by the appellants will show the errors complained of, and are as follows:

1. The defendants, Trousdale and Alexander, came into the case *voluntarily*, and there was no separability between their interests and that of the resident defendants.

They likewise came in *collusively* for the purpose of removing the cause.

The circuit court erred in not remanding the cause on motion of appellants.

2. The original bonds of Muhlenburgh County, Ky., sought to be invalidated by the appellants *are claimed* to have been issued under what purports to be an act

of the General Assembly of Kentucky passed February 24, 1868. (See Acts Ky. L., 1867–8, p. 622.) The bonds do not state under what act issued. Those bonds were issued without the consent of the justices of the peace of Muhlenburg County, and the pretended election under which authority is claimed for the issuance was held without the consent of these fiscal officials of the county. The appellants insist, for many reasons, that without this consent the bonds were issued without authority, and that it was error in the circuit court to hold otherwise.

3. Whatever may be the construction of the act of February 24, 1868, the alleged vote of the county, under which sanction for the issue is attempted to be placed, was not *knowingly* given under that act, it being *physically* impossible for the voters to have knowledge of it and understand what their interest under it required. It is insisted that the whole transaction was a cold-blooded and deliberate fraud on the people of the county, and that the same is so manifest of record as to leave no purchaser or holder of the bonds without knowledge. It was error of the court below to hold otherwise.

4. The act is assailed because it violates the fundamental principle of all free and constitutional government, which is the protection of the minority from absolute and arbitrary power whether exercised by a magistracy or the "largest majority."

It is likewise assailed because in violation of several provisions of the constitution of Kentucky in force at the time the act purports to have been passed, which provisions will be stated in this brief and argument.

It is assailed because in violation of several provisions of the Constitution of the United States, and especially the 14th amendment thereof.

It is insisted that the court below erred in not so holding with plaintiffs on all or some of these propositions.

5. The same errors are insisted on as to the bonds issued under the funding act, with the additional exception of that provision in the funding act, under which these last bonds are claimed, which imposes and creates a *specific lien* or *mortgage* on the property of the inhabitants of the county. This, it is insisted, was *ultra vires*, not within the power of the legislature, or of any other authority.

It was error in the court below not to so hold.

6. The court below erred on the whole case.

BRIEF AND ARGUMENT FOR APPELLANTS.

EPITOME AND ANALYSIS OF RECORD.

A large number of the tax-payers of Muhlenburgh County, in the State of Kentucky, brought their suit by original bill or petition on the equity side of the circuit court of that county to have declared invalid two classes of bonds purporting to have been issued by the county to the Elizabethtown and Paducah Railroad Company, designated respectively as the "original and funded bonds," and to have the collection of principal and interest of the same perpetually enjoined, and to stop the funding of the "old bonds." They seek relief for themselves and the county. The defendants to the bill or petition made by the plaintiffs or complainants were "Alexander Tinsley, sheriff of Mulenburgh County, Kentucky; J. H. Morton, county judge of same county; Martin Kittenger, William Young, Samuel Weir, William Whitaker, A. E. Newman, and J. E. Mills, and any other member of the funding board; Robert Glenn, holder of original bonds; George D. Park, holder of compromise bonds, and all holders of bonds issued to the Elizabeth and Paducah Railroad Company," the pleading stating that these holders of the said bonds were all that the plaintiffs or complainants knew the name of, but also alleging that all the holders of the bonds were believed to reside in Kentucky. The court is asked to give "such notice to the unknown bondholders as may be *within the jurisdiction of the court.*" None but bondholders *resident* in the State were within the jurisdiction of the court where the suit was instituted and the plaintiffs or complainants *made* their pleading. The defendants made to the suit were residents of the State and the county where it was commenced, and made *eo nomine.*

Injunction provisional was asked of and granted by the judge of the court.

The bill or petition of plaintiffs or complainants was filed July 27, 1885. August 12, 1885, the original defendants filed their motion to dissolve the injunction, and likewise a demurrer to the whole action. August 21, 1885, Jas. Alexander and Chas. W. Trousdale presented and had filed in the cause their respective petitions under the code of Kentucky, alleging that they were one of the defendants "described generally as holders of bonds issued to the Elizabeth and Paducah Railroad Company," the former as holder of nine original bonds of the face value of one hundred dollars each, and one of five hundred dollars face value, "with coupons;" the latter as holder of "compromise bonds," seven thousand dollars, face value. They asked to *enter their "appearance of record and make defense to this action."* This could not be refused under the code of practice of Kentucky, and, perhaps, was also permissible under the general practice in equity. Leave was accordingly granted as asked.

On *the same day* these just admitted defendants filed their petition for a removal of the cause to the United States court, alleging their non-residence, and that all the defendants, except Glenn and Park, had no pecuniary interest in the controversy; that the two latter refuse to make defense to the petition, and were acting "in concert with the plaintiffs therein."

At the filing of this petition for removal the defendants Glenn and Park filed their affidavit averring that the statement in the petition for removal as to their collusion with the plaintiffs was untrue, and that their declination to make defense was because they believed the justice of the cause was with the plaintiffs. Also the affidavits of C. L. Morehead and Louis Jones were filed, showing that they were necessarily familiar with

the residence of the holders of the bonds, and that the great mass of the bonds were held in the State of Kentucky. (See pp. 71, 72 of Record.)

These affidavits were read on the hearing of the motion to remove, but the court granted the motion to remove, though all the defendants, except Glenn and Park, stood by their motion to dissolve injunction and their demurrer to the petition, which defenses *were represented by the same counsel* that projected the non-resident defendants into the cause.

After removal of the cause to the United States court for 6th circuit and district of Kentucky, at Louisville, the plaintiffs or Complainants moved to remand the cause. (See this motion, pp. 74–75 of Record.)

In support of the motion interrogatories to Alexander and Trousdale were propounded and filed to be answered by them, *which they did not answer or respond to in any manner.* (See pp. 75, 76, 77 of Record.)

October 19th, 1885, the United States court overruled the motion of the plaintiffs to remand the cause and granted the motion of defendants to dissolve the provisional injunction, to which ruling of the court the plaintiffs made their exception of record.

December 7th, 1885, were filed in the United States court the several answers of Alexander and Trousdale.

Agreed statement of facts was filed. (See the same, on p. 96 of Record.)

Depositions were taken as to facts not agreed.

The following are specimens of the two classes of bonds respectively, coupons omitted:

100. *Old Bonds.* 100.

United States of America, State of Kentucky County of Muhlenburgh.

Number 1352.

For the Elizabethtown and Paducah Railroad, twenty

years after date, the county of Muhlenburgh, in the State of Kentucky, promises to pay to the bearer the sum of one hundred dollars, with interest thereon at the rate of seven per cent. per annum, payable semi-annually upon presentation of the proper coupons hereto attached, the principle and interest being payable at the Bank of America, in the city of New York, and to secure the payment of which the property and credit of the county are pledged.

In testimony whereof the judge of said county of Muhlenburgh has hereunto set his hand and affixed the corporate seal of said county this the first day of March, 1869, and caused the same to be attested by the signature hereto of the county clerk, who has also signed the coupons hereto attached.

(Signed) S. P. LOVE,
County Judge.

[SEAL] THOS. BRUCE,
County Clerk.

100 *New Bond.* 100.

United States of America, county of Muhlenburgh, State of Kentucky.

No. 129.

Twenty years after date the county of Muhlenburgh, in the State of Kentucky, promises to pay to the bearer the sum of one hundred dollars, with interest thereon at the rate of six per cent. per annum, payable semi-annually upon presentation of the proper coupons hereto attached, the principle and interest being payable at the Bank of America, in the city of New York, and to secure the payment of which the property and credit of the county are pledged: Provided, that at any time after five years from date hereof the said county shall have the right to pay, call in, and redeem this bond, together with the coupons hereto attached. In testimony whereof the judge of the said county of Muhlenburgh has hereunto set his hand and affixed the corporate seal of said county this the first day of July, 1878, and caused the same to be attested by the signa-

ture hereto of the county clerk, who has also signed the coupons hereto attached.

(Signed) J. H. MORTON,
County Judge.

[SEAL.] W. T. STILES,
County Clerk.

When the original bonds were issued to the amount of $400,000 the county was a "pauper county," *i. e.*, a county drawing from the State treasury more than it contributed, and was therefore unable to then maintain its own *necessary* local government, and still continues in this condition. The bonded debt thus created now amounts to nearly $1,000,000.

February 24, 1887, the cause was brought on for trial, the non-resident defendants, Alexander and Trousdale, standing on the whole case, pleading exhibits and proof; the original defendants made by the plaintiffs, except Glenn and Park, resting on their demurrer. Decree went against plaintiffs, dismissing their bill. The plaintiffs took an appeal, which is now here, and brings the record before this court for review, touching every error that may be in the record, whether pointed out by counsel or discovered by the court, as all appeals in chancery by the English practice require.

I.

REMOVAL OF CAUSE.

The first question involved is *necessarily* the removal of this cause from the State court. Was the action of the United States circuit court right or wrong in refusing to remand?

The removal in this case can not be rested on any act preceding that of March 3, 1875—it not falling within those *special* provisions in regard to officers and agents of the Federal Government, nor within the statutes for the protection of non-residents against prejudice in the

local or State forum. If the petitioners seeking removal have any ground to stand upon against this motion, it must be found in the first and second clauses of the 2d section of that act. For before that "the pleadings only were looked at and rights in respect to a removal were determined solely according to the *position* occupied as *plaintiffs* or *defendants* in the suit." The court could not *arrange* the parties according to their *real interest* in order to see where the *real controversy* was and between whom. (See Myer *vs.* Construction Co., etc., 100 U. S., p. 469; citing Coal Co. *vs.* Blatchford, 11 Wall., 174. See also Ayers *vs.* Wisewall, 12 U. S., 191–2.)

Under this rule the petitioners for removal have no case, they having *associated* themselves *voluntarily* as *co-defendants* with others, who are citizens of the *same* State with the plaintiffs.

Under the first clause of section 2 of act of 1875 the petitioning defendants can not remove.

This clause was first construed and applied in the case of Myer *vs.* Construction Co., etc., *supra*. In this case the removal was held proper under the first clause, because, as expressed by the court, "the only controversy to be *decided* was between citizens of different States," * * * "when the petition for removal was filed." The controversy between the defendants who were citizens of the same State with the plaintiffs had been *determined* and *disposed* of, leaving the only controversy to be settled in the cause, that as to which *all* the parties oppugnated *in interest*, when arrayed according to their interest, were citizens of different States.

In Ayers *vs.* Wisewall (112 U. S., 191–2) this first clause of section 25 of the act is again construed, it being held that if there be a *necessary* party to a suit, who is of the same State with the plaintiffs and *against*

whom relief is sought, his co-defendants, though of a different State from the plaintiffs, can not remove the cause.

The sheriff of the county was, as to the tax levied and in his hands for collection, a "*necessary* party," and relief is sought against him.

The county judge was a "necessary party" both as to the old or original bonds and the funded bonds, and relief is sought against him. He is a "necessary party" as to the original bonds because it is claimed that this officer has the power to levy a tax for the payment of interest on these bonds and for the liquidation of the principal. This power was exercised for several years, and is not yet abandoned. One of the very questions to be settled in this cause is as to that power. As to the funded bonds, the funding act in express terms clothes him with this power to levy taxes as to the funded bonds, so far as the act is competent to that end. So essential is the presence of sheriff of the county and county judge in this cause that without it the suit of the plaintiffs would be utterly abortive. In an especial manner is this true of the county judge, as will be manifest on a moment's reflection. In Shainwald *et al. v.* Lewis *et al.* (108 U. S., 158) the sheriff, who had levied an attachment on some of the property in controversy in the case, was recognized as one having sufficient interest in matters involved to be a necessary party. *A fortiori* here the sheriff and county judge are *indispensable* parties.

In Barney *vs.* Latham (103 U. S., 205), in which was first construed the second clause of the 2d section of the act of 1875, it is expressly settled that both as to the essentiality of parties as also to the separability of controversy, the question is to be determined alone with

reference to the suit "as framed by the plaintiffs"—that is, the plaintiffs have the right to select their antagonists; and if with these antagonists they have a *real controversy*, which is common *among* or *to* the defendants, then a common citizenship between any one of these defendants and plaintiffs, or any of them, prevents the removal of the cause. This is so, though the plaintiffs might have obtained partial or essential relief without making some one of the defendants parties to their suit.

Now, while the plaintiffs in this instance could have conducted their suit without making any bondholder a party and obtained a practical relief, yet it would not have been so emphatic and conclusive as if they had present in the suit two bondholders. Hence two were made parties to the suit by plaintiffs. They were *proper* parties, though not absolutely essential. Yet, after they were made parties *by the plaintiffs*, they became "*necessary*" parties within the meaning of the rule. Relief was prayed against them. The case of Ayers *vs.* Wisewall (112 U. S., 191–2) is authority for this.

In the present instance, as in that, the question between the two bondholders made defendants by the plaintiffs and the two bondholders who have come in of their own volition and seek removal is precisely the same. In almost the language of the case cited, no decree can be made in the cause as to the incoming and voluntary defendants, either for or against them, on the merits, unless it is likewise a decree for or against the two bondholders who were made parties by the plaintiffs. Therefore, the interest of the latter is identical in its whole length and breadth with the former, and the former have no controversy with the plaintiffs except what the latter have in the sense and meaning of the rule laid down in Ayers *vs.* Wisewall, *supra*. Therefore,

the bondholders who were made defendants by the plaintiffs to the bill, being citizens of the same State with the plaintiffs, the bondholders who have come in of their own volition can not remove.

This condition is not modified by the fact that the bondholders who were made parties by the plaintiffs do not defend. In Ayers *vs.* Wisewall, *supra*, the defendant whose presence prevented the non-resident defendants from removing did not in that case defend against the plaintiffs, but occupied in all particulars the same attitude that the bondholders made defendants by plaintiffs in this case occupy.

The other defendants, besides the sheriff and county judge, are, if not necessary, at least proper, defendants. But they are clearly *necessary* defendants—absolutely indispensable, acting under the assumed authority of the funding act to create on the plaintiffs a new obligation or debt; in truth, they are as indispensable nearly as the sheriff or county judge.

All the defendants made by the plaintiffs, except the bondholders, have made defense to the suit and are now pressing the same.

Thus it is manifest that the non-resident bondholders can not remove under the first clause of section 2 of act 1875.

The second clause of section 2 of act of 1875 was first construed and applied in Barny *vs.* Latham (103 U. S., 205).

In that case it was held that the separable controversy must be *wholly* between citizens of different States, and it must be one which can be *fully* determined between them to the *full extent* of the *relief sought* by *one party* and *denied* by the other.

In the case of Ayers *vs.* Wisewall, before quoted, this same clause was also up for construction and applica-

tion as well as the first clause. The court delivers as follows :

"The rule is now well established 'that this clause in the section refers only to suits where there exists' a *separate* and *distinct cause* of action on which a *separate* and *distinct* suit might *have been* brought and *complete* relief afforded as to such cause of action, with *all* the parties on *one* side of the controversy citizens of different States from those on the other. To say the least, the case must be one *capable* of *separation* into parts so that in one of the parts a controversy will be presented with citizens of one or more States on *one side* and citizens of other States on the *other*, which can be fully determined *without* the *presence* of the other parties to the suit *as it has been begun*." Frazier *vs.* Jemison (106 U. S., 191–'4) is cited.

The Supreme Court of the United States has further elucidated and illustrated the construction and application of this clause in several cases. In Louisville and Nashville R. R. Co. *vs.* Ide (114 U. S., 52) it is held that separate *defenses* do not make separate *controversies*, where *all* the defenses are *connected* with or *grow* out of the *same cause* of action. To the same effect is Hyde *vs.* Ruble (104 U. S., 407), Shanewald *vs.* Lewis, etc. (108 U. S., 158), cited before on another point; Winchester *vs.* Loud (108 U. S.) and Pisie *vs.* Toedt (115 U. S.), found in pamphlet issue on p. 41.

In Winchester *vs.* Loud it was said that, though *many* questions were involved, there was but a single controversy—and *all* the defendants *as made* by the plaintiffs were directly *interested* in the relief asked.

By all and each and every one of these tests the petitioning defendants can not remove under the second clause of section 2d of 1875.

1. The *controversy* in the suit as "framed" or "made" by plaintiffs is not wholly between citizens of

"*different* States" as that expression is expounded in the cases.

2. Nor would it be, if the rule is applied without reference to suit as "framed" by plaintiffs; that is, giving the voluntary defendants the same advantage they would have had, had the plaintiffs made them parties to the suit, there would still have been no controversy in the suit *wholly* between citizens of "different States."

3. Nor could the controversy be determined between the petitioning defendants and the plaintiffs to the full extent of the relief sought by the plaintiffs and denied by the defendants.

4. This cause is not separable into parts.

5. There can be no separate and distinct suit, controversy or cause of action on this record and on all the facts of the case between the plaintiffs and the petitioning non-resident defendants, "which can be *fully* determined without the presence of the other parties to the suit as it has been begun."

6. If it was conceded that there are "separate defenses" in the suit, which is not done, yet they are "connected with or grow out of the same cause of action." If there be many questions in this suit, yet there is but "a single controversy" and all the defendants *as made* by the plaintiffs are directly interested as to the relief asked.

All the cases in applying both the first and second clauses of section 2 of act of 1875 apply the act solely with reference to the suit as *shaped* by the plaintiffs. In some it is *expressly* so declared as a rule. In Barny *vs.* Latham (103 U. S., 205) the expression used as to this is "as framed by the plaintiffs," meaning the suit. In Ayers *vs.* Wisewall (112 U. S., 191-2) the expression is "as it (meaning the suit) has been begun."

From this the conclusion is obvious that the removal

acts do not contemplate the *voluntary* coming into a cause of parties who shall change or affect the status as fixed by the plaintiffs in the application of the removal acts. It is not intended that individuals not made parties by the plaintiffs shall come into the cause and disturb as to the forum selected by the plaintiffs. If parties come into a cause at their own instance as defendants they must abide the forum the plaintiffs have selected.

It is a rule of chancery that he who appears not to plead in abatement nor to the jurisdiction *submits* to the forum and must stick.

This is in accord with justice. It is in accord with reason.

It was clearly not the intent of Congress, so far as defendants are concerned, to enact for the benefit of defendants to a suit except those who were brought into the cause *ad invitum*.

In Ayers *vs.* Chicago (101 U. S., 184) one of the grounds on which removal was denied was that applicant *made himself* defendant. This is exactly the attitude of the non-resident defendants here. Indeed, the case cited covers as closely as a wet blanket in all directions.

For this, if for no other, reason the non-residents can not remove.

The act of 1875 requires that a cause shall be remanded if it appear that the party or parties asking removal were made defendants for the *purpose* of *removal* or *came into the cause collusively* for that purpose.

Again, in the case of James McHenry *et al. vs.* New York, Penn. & O. R. R. Co., decided November term, 1885, it was held in the circuit court U. S. western district of Pennsylvania, Circuit J. McKenna, and Acheson, J.,

sitting, that one not an *indispensable* party coming into a suit as plaintiff to *prevent removal* can not defeat the right of removal.

E converso, one who is not an *indispensable* party and who *comes* into a cause in order to have a removal, ought to be refused.

A *device* to have removal can no more be countenanced than a device to prevent it.

See the remarks of the late Justice Miller on the latter device in Arapahoe Co. *vs.* Kansas P. R'y Co. (4 Dil., 283).

The non-residents were not *indispensable* parties to the suit as "*begun*" or "*framed*" by the plaintiffs. It can not be denied that they came into the cause in order to have it removed.

1. The bonds held by them were insignificant in amount compared with those held in Kentucky.

2. The counsel injecting them into the cause commenced defense and plead for the original defendants. It can not be doubted for a moment that the counsel were really acting for the Kentucky bondholders and in their pay alone.

3. These non-resident defendants defiantly decline to answer the interrogatories filed on the motion to remand for the purpose of testing their good faith and showing that they were employed by the Kentucky bondholders to come into the cause in order to remove it and give the latter what they could not get for themselves. It is reasonable to conclude that the Kentucky bondholders, those having the largest interest, had *pregnant* reasons for not wishing to *appear*, though the plaintiffs invited them to come into the cause. The question of innocent purchaser undoubtedly troubled them. Their hands were not clean. In the Pennsylvania case referred to, the court alluded to the *evasive* character of the responsive

affidavit of the party who came into the cause to prevent removal as showing his bad faith. How much more condemnatory of the good faith of these parties is their absolute failure to answer the interrogatories propounded to them.

If the non-resident defendants voluntarily coming into this cause are not on the face of the record shown to have come in collusively with the bondholders of Kentucky, then it is impossible to establish a case of collusion.

II.

The original bonds, though not expressing on their face under what act issued, are claimed to have been issued under the act of Kentucky passed February 24, 1868.

The court will find the successive acts relating to the Elizabethtown and Paducah Railroad Company in appendices to this brief, A, B, and C, there being three in all, not including what is called the funding act. This last act will be found set out in full in Appendix D.

If issued under the act of 1868, by what authority was the election to be ordered and the issue of the bonds to be ordered? By the county court, composed of the majority of the justices of the peace and the county judge sitting together or by the county judge alone? By the latter the record shows the election to have been held and the *issue* of the bonds ordered and made.

The appellants insist that the county judge sitting alone was without power to order the election or issue the bonds.

1. *Where there has been a fixed and long continued policy or system acted on in a State, it is not to be presumed that the legislature intended in an act to depart*

from this policy, unless it is so expressly declared or the terms of the act are necessarily inconsistent with the general policy or system.

The established policy of the State of Kentucky in the conduct and management of *all* fiscal business of the counties, whether ordinary or extraordinary, has been to interpose between the people and the *assumption* and *creation* of *all* pecuniary obligations and *all* levies, the justices of the peace, and to allow *no* charge and no levy to be made *directly* or *indirectly* upon the people of a county, by tithables, or *on property*, for, or on behalf of, any matter appertaining to or affecting the people of the particular county as distinguished from the whole people of the State, without the consent of, or a conference by, a *majority* of the justices of the peace in commission. Whenever this policy has been departed from to the *smallest* extent, it has been declared in express terms, and was and is *exceptional*.

In the investigation as to this, it is unnecessary to go further back than the constitution of 1799, though that of 1792 creates justices of the peace, thus, at this early day, embedding them in the constitutional structure of the State, and placing them beyond the legislative power to *abolish*. The second constitution, that of 1799, also *again* creates justices of the peace and provides for the construction out of them of county courts. (See 1 M. & B., 62.)

There must have been a tenacious as well as a clearly defined motive in thus identifying, at these early times, the justices of the peace with the constitutional foundations of the commonwealth. There can be but one motive assigned. It was the creation of a magistracy so *near* the people and so familiar with their interests, that in all *business matters* these latter would be *protected* and the people *guarded*. The need of convenience in the admin-

istration of *petty* justice, and the facilities for police supervision, will not sufficiently account for this phenomenon. For, as to these affairs, the legislature could well be trusted to provide adequate agencies. However, legislation under this constitution and judicial exposition subsequent, plainly indicate that the founders of the State have not been misinterpreted as to the motive actuating them in this regard, as will be made manifest in the progress of this argument.

The policy contended for was initiated at least as far back as the act of 1796 (December 17th), though not fully developed. (1 M. & B., 504.) This act was passed under the first constitution, three years before the second constitution. The policy continued to grow and expand through the acts of 1797 (2 M. & B. 1113), likewise passed under the first constitution, of January 31, 1810, 1 M. & B., 506; January 15, 1811 (1 M. & B., 507); and of December 21, 1821 (1 M. & B., 508), until with the last act it may be said to have fully matured in legislative *expression;* though the idea, the conception, *was present* from the adoption of the constitution of 1792 in constitutional ordinance and legislative act up to and inclusive of the last act referred to. The three last acts were passed under the second constitution, or that of 1799. The act of 1811 forbids any appropriation for "court-house," jail, or any additional repairs thereto, for building bridges," etc., enumerating the various expenditures necessary or proper in the conduct of the county government, *i. e.*, the *ordinary* charges on the people of a county for such a purpose, "unless a *majority* of all the justices in commission" for the county shall be present and *compose the court,* and then further inhibits the levy of "*any* charge of money for *any purpose whatever,*" without a constitution of the court, by a majority of the justices in commission.

The act of 1821 uses this language: "Hereafter no *county* court within the commonwealth shall have the power to *appropriate or order to be paid* out of the *funds* of, or create *any* debt, or *make any* contract against the county over which they preside, any sum exceeding *one hundred* dollars, unless a *majority* of all the magistrates (justices of the peace) entitled to a seat at such court shall be present."

The act of 1830 (1 M. & B., 508), a majority of justices are required to be present for the appointment of a clerk of the county court.

The act of 1833 (1 M. & B., 509) requires a majority of justices for permission to erect gates across the roads.

The act of 1834 (1 M. & B., 510) requires a majority to act in the *appointment of commissioners* to settle the accounts of executors, administrators, guardians, &c.

The last three acts are cited to show how *minutely* the policy of the State associated either the *consent* or *deliberation* of a majority of the justices with the *merely business* administration of the county, as a *sine qua non*.

During the entire period of the initiation and growth of this policy the "county court" was also empowered to perform with a less number of justices of the peace —at one time three, at another by one—chosen as chairman and presiding officer of the court, not at all dissimilar to the present presiding judge, all duties as to probate of wills, grant of letters of administration, appointing guardians, and, in fine, all matters pertaining to estates; also the opening of roads, and such other matters as were more or less judicial. Also, there was during this time a smaller number of justices of the peace who, as a "county court," tried controversies or suits between citizens *purely* judicial. This "county

court" was called variously the "monthly court," "court of quarter sessions," and "court of claims or levies," at least one more alias than that now existing as to the present county court, or the one succeeding the last constitution—that of 1850. Yet it was the *same* tribunal, the *same* authority, the *same* "county court," with power granted or denied, as it might be constituted at one time or another, or according to the number of members that might be present at one session or another. That is, when constituted of certain members it had *power* or *jurisdiction* to do *certain* things, which, when not so constituted, it could not do, although competent to do many other things. The "court of claims and levies" was not a separate or distinct court from the "county court," but merely the "county court" *in session* to pass on claims, make appropriations, and levy taxes for payment. The "monthly court" was not separate or distinct from the "county court," but merely the "county court" *in session* to dispose of matters of probate and other matters specially required by law to be acted on by the "county court" monthly. The "court of quarter sessions" was not separate and distinct from the county court, but merely the "county court" *in session* to hear and dispose of private controversies between litigants, and such other affairs as by law were required to be dispatched by the "county court" quarterly. But for jurisdiction at these respective sessions the "county court" depended on the number of *members* present. For it must not be overlooked that *all* the justices of the peace for a county were *members* of the "county court," and had a right to sit and act at any of these various sessions, except, perhaps, at the quarterly session provided for in the act of June 28, 1792. (1 Littell, p. 90.) This doubt, and it is barely a

doubt, arises out of the particular wording of that act, which, however, was afterwards changed.

In the constitution of 1850 (the present and third one) the convention that framed it attempted to change this policy and to deprive the people of the counties of the guardianship of their justices of the peace. A "county court" was established "in each county," "to consist of a presiding judge and two associate judges, any two of whom" should "constitute a court," "the jurisdiction" of which was "to be regulated by law," but "until changed" was to be and remain the same as that "vested in the county courts of" the State at the time the constitution was framed. This was the jurisdiction that has just been traced, and which will be found in the acts cited, including the *fiscal* business of the counties. It is to be observed that the word "*jurisdiction*" is used in this constitution to describe the powers of the county court, without distinction as between judicial, legislative, or ministerial functions of the court, without reference to the work to be done, whether it be judicial, *quasi*-judicial, or fiscal. Then when the county court does an act without the requisite number of members, even if it be fiscal altogether, the court was *without jurisdiction* in the special premises, and the act therefore *void*.

The convention was, however, afraid to trust their instrument for ratification to the people with this innovation on the ancient policy of the commonwealth, without a provision by which the people could, at the earliest moment, relieve themselves from it and restore the "old time" habit as to their county fiscal affairs, and even the use and the *interposition* of the justices of the peace, officers created by this as well as the preceding constitutions, in all or any matters that might come before the county court for action, whether judi-

cial, *quasi judicial*, legislative, or ministerial. It was ordained that "the general assembly" might, "at any time, abolish the office of the associate judges whenever 'it should' be deemed expedient," "in which event they might *associate* with said court any or all justices of the peace for the transaction of business." It was still farther ordained, that if the general assembly did not desire to dispense with the associate judges they might provide "that the justices of the peace in each county" should "*sit* at the court of claims and assist in laying the county levy and *making appropriations.*"

See art. IV. present constitution, secs. 29, 33, 37, 1 Stan. R. S., pp. 137, 138, 139.

If there could be any doubt as to the position taken by counsel for appellants, that whatever distinguishing names or designations may have been used, or may have attached to these courts of the counties by reason, either of the time they may have been held, or of the business dealt with, these courts are but different *sessions* of the *one* court, and that the "county court"—section 37, article IV. of the present constitution must forever quiet it.

Here a "court of claims" is mentioned, yet *none is created*. The only court created to deal with claims and levies and appropriations is the "county court," constituted by section 29 of this article. Certainly it can not be denied that if no magistrates were added, claims, levies, and appropriations would have been disposed of by the "presiding judge" and the "associate judges," according to the jurisdiction devolved on them by section 33 of the same article. Yet these are constituted and designated as "a county court," and noth-

ing more. It is too clear for argument that the framers did not mean that the possible calling in of the justices to sit changed the court, or in anywise made it other than or different from the county court, organized by section 29.

As to this position taken for appellants a Q. E. D. might be subscribed; for the framers of the now existing organic law of the State employed language in constructing the county court with the exact significance that had previously appertained in their minds to a tribunal for the transaction of certain affairs—for the exercise of a certain jurisdiction, regarded by long and well established custom as belonging exclusively to county government, and so assigned by preceding constitutional ordinances and statutes. Article IV. of the present constitution is the testimony of its framers, that in the *past*, whether called a "monthly court," a "court of quarter sessions," or a "court of claims and levies," there was but the *one* court, and that was the "county court," and all the other designations were only different sessions of the same court for the discharge of different duties, as these *might be*, or were allotted, by the legislature from time to time—the court requiring at one time the presence of a greater, at another of a less, number of members in order *to have jurisdiction*. It is also their declaration that in the *future*, so long as their constitution remained, that there was to be only the one county court for the discharge of all the business that a county might have, whatever its description or character, though, for purely fiscal affairs, power is given the legislature to *require* a larger membership before, as to these affairs, the court shall have jurisdiction.

By December, 1851, the legislature had framed and adopted a codification of statutory law called the "Re-

vised Statutes." Art. XIX. of chap. 27 of this codification has the following section:

SEC. 1. In addition to the jurisdiction given to the county courts by the Revised Statutes, or any statute of a *local character*, they shall severally have jurisdiction within their respective counties—

1. To lay and superintend the collection and disbursement of the county levy.
2. To erect, superintend, and repair all *needful* public *county* buildings and *structures*.
3. To *superintend* and *control* the *fiscal* affairs and property of the county, and to make provision for the maintenance of the poor.

Revised Statutes, p. 233.

Article XXI. of the same chapter abolishes the offices of associate judge and the associate judges. It is provided that the presiding judge of the court shall hold in each county, at the seat of justice thereof, a county court, on the days prescribed by law; but "at the court of claims," which *shall* be held in October of each year, the "justices of the peace of the county *shall* sit with the presiding judge, and *constitute* a court," a "majority of the justices in commission in the county and the presiding judge to constitute a quorum to do business." The presiding judge may cause the justices of the peace of the county to be summoned to attend at *other terms* of the court, if he thinks proper. The attendance of the justices, when summoned by the presiding judge to attend at "other terms," as well as at the annual October term, to act on the "fiscal affairs of the county," can be coerced. They are excluded from membership in the county court, except *when it is* ENGAGED *in laying the county levy*, and in *appropriating* money, and in *transacting other* FINANCIAL BUSINESS of the county.

Then they are under compulsion to appear, sit with the presiding juge, and be and act as *members* of the court. The presiding judge is prohibited from making an appropriation greater than *fifty* dollars for any *one* purpose at any term of court held by him alone, or for a larger sum for *all* purposes than *one hundred* dollars, at any one term so held by him.

Revised Statutes, p. 234, *et ante et sequitur.*

Thus at the very first moment practicable, in a little over a year after the present constitution went into operation, the people returned again to the *protection* of the justices of the peace as to all the "fiscal affairs" of, or that might at any time appertain to, the county, and re-established in this regard the *ancient policy.*

If there might be for a moment a perplexity as to whether the "county court," under the legislation, prior to the present constitution, lost its identity or its legislative designation, when engaged in the exercise of *different functions,* by the *casual* appellations that grew out of these different functions, for the purpose of indicating by the special business what *particular session* of the court was meant—there can be none in face of these very perspicuous provisions of the Revised Statutes. Yet the brief of adversary counsel, with deliberation, mentions, as something that necessarily creates confusion as to what may be intended at any time by the legislature, when using the term "county court," that in these provisions we have the names "county court," "court of claims," and "court of levy and disbursements." To this, a sort of *quere de hoc,* it could be readily replied that it was clear the legislature was not, in these enactments, creating a court, for attention to that great body of business that had from the foundation of the State been entrusted to and administered

by the county court, *different* from that created by the present constitution, if, indeed, it had power to do so. It is plain that, for the dispatch of this work, the legislature was only *reconstructing* that court under the *permission* given by the constitution, which permission rigidly limited the *extent* to which this reconstruction might be carried. If, then, the constitution created only one court for county business, and that the "county court" without an alias, which has been shown, then the Revised Statutes have only one court for this jurisdiction, and that the "county court" without an alias or divisibility in "names." But the very language of the legislation now commented on answers these doubts, these speculations, these peradventures. "Court of claims" and "court of levy and disbursements" are not "*names*" at all of a court. These words only express the *work* that may at a certain "term," or at "other terms" *occupy* the attention of the "county court," and that work is entirely *fiscal*. The "court of claims" and the "court of levy and disbursements" mean one and the same thing—the work is identical—and the language is only employed to indicate a particular *session* of the county court. This is apparent from the context in which these expressions occur. Thus: "justices of the peace shall only compose a part of the court (*i. e.* county court) when it is *engaged* in laying the county levy," etc.—it shall be the duty of the *county* court of *levy* and *disbursements*, etc. How there could ever be even a stumble over these expressions, quoted by counsel for appellees; how these could breed the slightest confusion as to the county court, or its proper designation—is inconceivable to the writer.

The membership of the county court was to be increased when it was *in session* on claims, levy, appropriations or "other financial" business. Hence there was

no distinction between a "county court proper" and "a court of claims" for the legislature to recognize "in the enactments made soon after the adoption of the constitution." There was no such distinction for "subsequent legislatures" to be "indifferent to." The very fact that legislatures did legislate as to *this very matter* almost *immediately* after the adoption of the constitution, and did not recognize such a distinction, is the "best evidence" that no such distinction was made or intended by the framers of that instrument. The organic law of the State knows of but one court to manage the *fiscal* affairs of counties, and knows of but one name for that court, and that is "county court." In order to understand under this constitution whether the presiding judge alone, or the presiding judge with the justices of the peace, is intended in a statute assigning work to or devolving a duty on the county court, it is only necessary to see what *sort* of work or what duty it is. If either the work or duty concerns "claims" against the county to be satisfied out of a revenue to be raised by a county levy (*i. e.*, a levy on polls), or "the county levy," or the "making of appropriations out of this county levy," for the usual county purposes, such as building courthouse, jails, "needful public structures," "the maintenance of the poor," roads, etc., or any "OTHER FINANCIAL business," then the presiding judge and the justices of the peace are intended. If the work or duty does not concern any of these matters, then when the legislature refers in an act to the county court, the presiding judge alone is intended.

The confusion as to so manifest an interpretation of the present constitution and the legislation *immediately* succeeding its adoption, here suggested, has been caused by reverting unconsciously to the county court preced-

ing this constitution, and the loose popular reference to certain sessions of the justices of the peace (who constituted it in all its functions) in regard to county levy roads and bridges, etc., by a name expressive of the *special business* of the sittings, as though there was for *any* county business a tribunal different from the county court.

This inaccuracy has sometimes crept into legislative acts, but without any significance, as the context of these acts will show. The judges that have presided in the State, as well as the Federal judges appointed from the State, have been contemporary with the county courts preceding the new constitution, and therefore quite naturally have their expositions as to the county court more or less confused by the inaccuracy referred to, and embarrass the precision of the present constitution by that inaccuracy of expression. Thus was the reasoning of the judge in the Bowling Green & Madisonville Railroad Co. *vs.* Warren County Court (10 Bush.) clouded. Thus it was that counsel was *entirely* darkened in the case of Logan County *vs.* Caldwell, and the people of Logan lost their rights. The court *properly* declined to have this case put among the precedents, though it decided for the first time a new and very grave question. Of course Cook *vs.* Lyon County, so far as it touches what had been decided in the last case, is in the same "outer darkness."

It has been insisted by counsel for appellants that, when examined, the "county court" of Kentucky, as it was *planted* in the State and continued up to the new constitution, was, so far as the fiscal affairs of the county were concerned, the "county court," and none other, though, as under the present constitution, a *smaller number* of constituents was required for certain work than for financial or fiscal affairs. In tracing

through the several statutes, cited heretofore, the county court as it existed prior to the present constitution, it is submitted that this has been conclusively established. But perhaps it may be made more satisfactory by looking into the first constitution of the State, that of 1792. Article VI., sec. 6, requires a competent number of justices of the peace to be commissioned, without, however, fixing or assigning them functions or jurisdiction in this section. Thus the material for a county court was provided by this *first* organic law. Article VIII., sec. 6 of the same instrument, provides that all laws of Virginia, not inconsistent with that constitution, and not local to that State, should be in force until altered, amended, or repealed by the State of Kentucky.

See this constitution in Rev. Statutes of Ky., by Stanton.

By reference to the revised code of Virginia (1 vol., p. 124 and note, and 2 vol., p. 63) it will be discovered that at the adoption of the first constitution of the State, that of 1792, the county court in Virginia, by the laws then in force, had charge of "matters of *police* and *economy*" in addition to much purely judicial labor or function, and that it was to be held by the justices of the peace, any *four* of whom might *constitute* the court, *except* when a county levy or appropriations were to be made. Then a *majority* of the justices was required to constitute the court. No legislation of Kentucky intervened between the first and the second constitution, that of 1799, to change this feature of the county court system. So far from doing anything of the kind, the action of the majority was extended to some details of mere business supposed not to be embraced by the Virginia enactments. The constitution of 1799, like its predecessor, and almost in the same language, ordained that there should be in each county

a "competent" number of justices of the peace, but also required the legislature to *establish* in each county a county court. (Article IV., secs. 5 and 6.) The county court as created by Virginia, and with slight modifications re-enacted by the act of June 29, 1792 (1 Littell., 90), remained until the legislature carried out section 6 of this article. The course of legislation under this constitutional ordinance has already been briefly traced. To understand the thorough determination of the people to have the fiscal or financial affairs of the counties attended to by at least a majority of the justices of the peace, it is to be noted that this early act of June 28, 1792, the constitution of that year having gone into effect only the April previous, provided for *coercing* the attendance of the justices when fiscal affairs were under consideration.

Attention has been directed to the obvious interpretation of the provisions of the present constitution as to the control of the fiscal concerns of the counties and the legislation under these provisions. These ordinances, constitutional and statutory, might well have been relied on by the people to keep them safe from *any and all* financial impositions unless by the *consent* or with the *conference* of a majority of the justices of the peace. To these very plain and direct ordinances they had a right to look and to trust for the interposition of the justices between them and the assumption or payment of any debt, "*under the authority of any law chargeable on the county*," quoting from act of 1797 (2 M. & B., 1113). But the litigation, which culminated, after several years' pendency, in the decisions of Bowling Green and Madisonville R. R. Co. *vs.* Warren Co., and Logan County *vs.* Caldwell, by appellate court of Kentucky, commenced—and for the first time the proposition was presented to the courts of the State

that the attendance of the justices in "transacting" "financial business" depended not on the plain direction of the constitution and the statutes, *but on the opinion of a judge as to whether there was any* "DISCRETION" TO BE EXERCISED IN THE "TRANSACTING" OF THE BUSINESS, *and as to whether the duty imposed on the county court* IN "TRANSACTING" *was* "MINISTERIAL AND MANDATORY." This was a device quite favorable to railroad projectors and railroad wreckers. The people evidently took alarm, and quickly the legislature "headed off" this evasion; and even *before* the cases, in which this doctrine was first broached, terminated, passed an act that required that the justices should be present and act whenever a submission to the vote of the people for a railroad subscription, either in stock or bonds, was involved, or whenever bonds were to be issued or a tax to be levied either to pay stock, bonds, or the interest thereon, however "ministerial or mandatory" the acts in these regards might be, or however absent from the transaction any discretion might be.

See General Statutes of Kentucky, a new or second codification adopted September 1, 1873, chap. 28, art. XVII., sec. 2, p. 306.

Could there be a more forceful declaration by the legislature of the meaning of the constitution and of the statutes than this? It is, *under the circumstances*, a manifest legislative interpretation of the *preceding* acts as to the control by the justices of *all* financial affairs of the counties, whatever may be their character or description. It is an emphasis of the principle urged, that the policy of Kentucky has been and is that the people of a county can incur no pecuniary charge or liability, and that no levy or tax can be laid, without the consent or conference of a majority of the justices

of the peace. I make precisely the same use of *subsequent* legislation to determine *intent* of *previous* enactment that prevailed with counsel and court in the case Gelpcke *vs.* City of Dubuque (1 Wallace, 175–220, 221).

Clear as this policy is on the face of the legislation of the State, it has likewise judicial sanction. The "county court" was empowered "to erect, superintend, and repair all needful county buildings and structures." (Sec. 8, art. XIX. chap. 27, Revised Statutes.) The county judge of Harrison County, one of the counties of the State, sitting alone, made an order for the building of a jailer's house on the public square. Surely in this act there was far less of discretion required than in the administration of any of the matters devolved on the county court by the amending act of the Elizabethtown and Paducah Railroad—1868. Yet the court decided that the county bourt held by presiding judge alone could not make the order, and that the county was not bound. (Harrison County Court *vs.* Smith's admr., 15 B. Mon., 156.)

To the same effect is Elliot County *vs.* Kitchen (14 Bush., 293.)

There has been an attempt to make an exception from this general policy by a construction that confines the interposition of justices of the peace to matters of the county levy. This can not be done in face of the following provision: Section 1, article XVII., p. 385 of the codification of Kentucky statutes, called General Statutes of Kentucky, provides that—

"The county judge, in each county, shall hold the county court on the days prescribed by law; but at the court of claims, which shall be held once in each year, the justices of the peace of the county *shall* be associated with him and constitute *the court;* a majority of whom shall constitute a quorum for the transaction of

business, which shall be confined to *laying the county levy*, appropriating money, and transacting OTHER FINANCIAL BUSINESS of the county."

Here matters embraced by the county levy—*i. e.*, claims against the county already incurred or to be incurred for strictly county purposes, are included in one clause, for a county levy can not be laid until the amount needed has been first ascertained. The appropriation of money is embraced by another clause. Then *other* financial business of the county is provided for. Now what other financial business could there be, unless it be something outside of the matters embraced by the county levy and the appropriation of money? None could exist except dealing with matters devolved by *special acts* of the legislature, which would comprehend subscriptions to, or taxation for, the construction of railroads.

Article XV., p. 384, provides that the county judge may at any time call a special term of the county court. To the same effect is sec. 3 of article XVII., p. 386. Thus there need be no delay in providing for any "financial business of the county."

"The county judge can *lay* no charge upon the county, for any purpose, exceeding the sum to which he is restricted by law" (which is fifty dollars for any *one* account, and one hundred dollars on all accounts at any one term), "nor is the county *bound* by *any implied acquiescence of the* justices." (Harrison County *vs.* Smith, adm'r, 15 B. Mon., 166).

The act of March 17, 1876, p. 1091, General Statutes K'y, giving directions to assessors, recognizes most distinctly that the county court may *levy ad valorem* taxes "*by virtue* of any power conferred by law." This is not what is denominated the county levy, which is confined to a poll tax.

Moreover, the statutes point out in *express terms* when the county judge may act alone and on what matters he may act alone. As to this there can be no mistake. Indeed, there is a studious effort to *define* and *limit* his jurisdiction. There is really no function to be exercised by him which is not *explicitly* pointed out. In no instance can he alone deal *financially* to charge the county with over fifty dollars in any one case or one hundred dollars in any one term.

Thus, there can be no escape from what was designed and fixed as the policy of the State by assuming that justices of the peace were only to be consulted about financial matters embraced by the county levy. This is a miserably weak evasion.

There being, then, no doubt that the uniform policy of the State is and has been one way, the *construction* of the amending act of 1868, contended for by the appellees, being the other way, ought to be refused. It can not be pretended that in express terms or by necessary implication the act dispenses with this policy.

2. *The intent of the legislature, insisted on by the appelles, in the act of* 1868, *would be a suspension of a general law for and on behalf of an individual or a certain and limited class of persons, and for or in a particular locality. It is claimed that the legislature intended to vest the presiding judge sitting alone as a county court with power to order an election for subscription of stock by Muhlenburg County in the Elizabethtown and Paducah Railroad Company, to appoint officers to hold the election, to order the issue of bonds, and even agree with the company on the rate of interest the bonds should bear, and to impose taxes for the payment of this interest and the principal of the bonds.*

In Pennington *vs.* Woolfolk (79 Ky., p. 16), it is held

that power to impose taxes is legislative, and that to assess taxes is not judicial. The appellees seek to have this power exercised by the presiding judge sitting alone, and without the justices of the peace, for a sum exceeding fifty or one hundred dollars. The statutes in force at the time the act of 1868 amending the charter of the Elizabethtown and Paducah Railway Company, confined this power to the presiding judge and justices of the peace, and *forbade* its exercise by the county court when held by the presiding judge alone So jealous was the State in this regard that the clerk of the county court was required to note the *presence* of the *justices at sessions* of the county court when *fiscal* matters were being considered. (See sec. 9, art. XVII., page 387, General Statutes.) Thus there could be no *valid* action unless an *actual* majority attended, and the *records must show* this majority. This was and is the general law of the land. To suspend it would be odious and unreasonable. The legislature is not, unless by express language, or by provisions not consistent with the general law, to have such an intent attributed to it. Besides, such a suspension of a general law would be unconstitutional. The legislature may suspend general law, but when it does so the suspension must be *general*, and can not be made for individual cases, or for particular localities. (Cooly Con. Lim., 391.) An act, if it be possible to do so, must always be treated as without intent to violate the constitution. There is in this act nothing that in the remotest is necessarily in conflict with the general law, as expounded.

"If the construction of the charter" under which "appellees" claim "is involved in *doubt, still that construction* should be given it, in a case like this, most favorable to the county or people." (Bowling Green & Madisonville Railroad Company *vs.* Warren County, 10

Bush., 723.) Even the appellees would not deny that there was at least doubt as to the construction they urge. Thus, according to these rules of interpretation, or any of them, they must fail.

3. It may be argued that there could be no subscription of stock without an enabling act, and that as to this, the amended charter of 1868 was *res integra*—that the fiscal affairs with which the justices of the peace dealt were *habitually* only those debts and contracts that were intended to be liquidated by the county levy—an assessment on polls, the county court having, by general law, no right to tax personal or real property. Therefore, when a tax is to be laid on personal and real property, as in the instance of these bonds, it is not to be presumed that the legislature intended this charge or debt to be imposed by the county court of which the justices are members. There is absolutely no force whatever in this position. Why should the legislature be presumed to trust this new contract and new source of taxation to the presiding judge, when such care has been taken to exclude him from the control of ordinary contracts and sources of taxation? There is precisely the same reason for the administration of the *new* contract and *new* sources of taxation by the justices of the peace as there is for the administration of the usual contracts and sources of taxation. The natural conclusion would be that the legislature intended the same taxing body to manage the new contract and its incidents that managed the old. The justices of the peace are the taxing power for all county matters. The express language of the statute confides not only claims and debts to be paid out of the county levy, and the county levy, but "OTHER *financial*" "affairs" or "business" to the county court constituted with the justices. This is broad enough to embrace *any business outside*

of the county levy, stock subscriptions to railroads, issuing of bonds, payment of interest, &c.—in fine, any contract or business that the county might, by special legislation, become connected with. If the language, "other financial business," does not mean this, then it means nothing, and is surplusage. For the preceding terms *exhaust* all the fiscal administration that is usual and ordinary for the county—all that can be exercised without enabling acts.

Indeed these words "other financial business," imperatively require that *any business* at all finanical *shall* be administered by the justices of the peace sitting with the presiding judge. It is strange that, in face of this clause of the statute, any court could entertain the idea of excluding the justices from any financial affair of the county whether there was any discretion or not to be exercised—whether the acts to be done were or not "ministerial and mandatory." It can only be accounted for by inadvertence and by a failure to apprehend clearly the case of the Louisville and Nashville Railroad Co. *vs.* Davidson County, *et al.*, 1 Sneed (Tenn.) 637—which was the case mainly consulted and considered by the court in 10th Bush. That case, for several reasons, was calculated to mislead.

It was an ambitious opinion, and like all such opinions is full of dialectic irrelevances. There is a long argument as to whether the quorum court in Tennessee could submit to a popular vote the question of subscription to a railroad company, or whether it should be done by all the justices. There was no necessity for this. The act in *express* terms provided when the majority of the justices should act on the proposition. That was when after the failure of the people to vote for it on the first submission, application was made for a second submission. Then "a concurrence of a ma-

jority of all the justices of the county" was required. It does seem that the judge writing the opinion had but to rest his opinion on this language of the statute. In fact he finally came round to it. (See 1 Sneed, p. 658.)

This was a case totally unfit to instruct or influence a Kentucky court in passing on the charter under consideration in 10 Bush. The conditions dealt with in the Tennessee case were totally different from those present in the Kentucky case. Taxation in Tennessee for local or county purposes is granted to the *counties* and not to the justices of the peace or any other body of men. The legislature may appoint any one to administer for the county this power of taxation. The acts under which the subscriptions were made in Tennessee were *general* and *public*, a system of internal improvement devised by the legislature in obedience to a direction given by the constitution, and applicable to the whole State and every county in it. There was no suspension of the general law for an individual or in a certain locality. The opinion dwells on these conditions at great length.

In Kentucky the power to tax is given to certain officers or a certain body of men, not to the counties. So it was in Virginia. The statute considered in the 10th Bush case was not general, but private, and only applicable to a few localities.

In Tennessee a majority of all the justices of the peace is required *only* for the "*levy of a tax*" "or to appropriate public money to an amount over fifty dollars." (See act of 1847, chap. 106, section 1, found in section 4190, Stiger and Thompson, Statutes of Tennessee). In Kentucky the majority of the justices of the peace is required for *all* fiscal business, except appropriation on a contract for fifty dollars or under. In Tennessee it is expressly provided that three justices of the peace

at their sessions constitute a court and may transact *all* business for the performance of which a larger number is not expressly required. (See section 4192, Stiger and Thompson, Statutes of Tennessee.)

Thus, unless the legislature in Tennessee *expressly* require a given act to be performed by a greater number, three will be sufficient—a policy the very *reverse* of that in Kentucky.

The judge who prepared the opinion in 10th Bush case misapprehended the Tennessee judge when he represents him as ruling that a subscription of stock in a railroad company is not to contract a debt. It is true the exact words are quoted, but out of their proper connection. What the Tennessee judge means is, that the act in that instance gave no power to the *county court*, or to *any officer*, to levy a tax, appropriate money, or contract a debt, but the power to tax *residing* in the *county;* "all this was referred to the people." The officers in whom the legislature from time to time reposed the duty to act for the counties in executing the power to tax, granted the counties, were at all times merely ministerial in performing these duties, and the legislature might at any time change them. It had done so in the acts then being considered by directing the people to exercise *directly*, and not through agents, the power of contracting the debt, and putting on themselves the tax. It is perfectly clear that if the power of taxation and the power to contract debt had been resident in a court, or a certain body of men, as in Kentucky, instead of being resident in the counties, as in Tennessee, the language quoted by Justice Pryor in 10th Bush would not have been used. It is conceded that the subscription of stock was to contract a debt, to appropriate money, and subject to tax levy.

It is only intended in the Tennessee case that this

was not done by the magistrates, but by the people of the county, because the power to tax belonged to them, and the legislature had authorized them to exercise *directly*, and not through agents, this power. Hence, in view of the conditions dealt with in that case, all that is said about "discretion," about "ministerial and mandatory" exercise of power, is utterly inapplicable in Kentucky, and ought never to have crept into a decision by its court. In Tennessee the justices of the peace have no taxing power vested in them. It is granted to the counties. The justices are but the agents, when the legislature so appoints, of the people of the county to execute it. When the legislature directs the people of the county to execute it, these agents disappear into mere automata.

But as to a new source of taxation or an unusual contract the appellate court of Kentucky did, in the case of Elliot *vs.* Kitchen (14 Bush., 293), decide that when granted by the legislature the same court that administered the "county levy," or claims under it, *must* administer this new source of revenue and the new contract.

4. The 10th Bush. case rests not *mainly*, indeed, but slightly, on the matter of "discretion," or of "ministerial and mandatory" performances. It rests mainly on a section of a charter of the Bowling Green and Madisonville Railroad Company, exactly like section 4 of the amended charter of 1868, and on an examination of the entire act.

There are many things in this entire act of 1868 utterly incompatible with the idea that it was to be administered by the presiding judge, sitting alone. We ask the court to examine it, section by section.

(*a*) Is it probable that the legislature intended to ap-

ply a different rule to the counties from that applied to the cities and towns? In providing for subscription by cities and towns, it requires the submission to be made by the boards or trustees, who *exercise the taxing power —for the ordinary* and *usual purposes of the cities and towns*—and the mayors, chairmen of boards, and clerks are assigned the same duties that are assigned to the presiding judge and the clerk of the county court. Why should the taxing authorities of cities and towns administer the act and not the taxing authorities of counties?

(*b*) Though the second section of the act did require a submission at the request of the railroad company to a vote of a "specified amount to its capital stock, either *absolutely* or on specified condition," I insist that, however *mandatory* this might be, *discretion* in execution was eminently necessary. The tribunal required to submit had to *fix the time elapsing between the order submitting and the holding of the election* so it was within thirty days, and to *select the judges and clerks*. Both of these functions concerned the interest of the people of the county vitally; the first, that sufficient time might be given *to enable the people to consult and inquire* as to what was their interest in the premises; second, that capable and *honest* officers to hold the election should be appointed to prevent *fraudulent voting* and *fraudulent returns* by which a burden would be put on the people against their will. Is it reasonable to suppose that the legislature intended to withdraw the people from the protection of their justices of the peace in matters so grave as these? To do so would have been wicked. Indeed, the proof in the case is abundant that the ten days fixed by the county judge was so short that it was physically impossible for the people in several remote districts to have

any knowledge of the act under which they were supposed to be voting.

(*c*) The people had no right or authority to fix the rate of interest or the time for the maturity of the bonds. These were questions not authorized or directed to be submitted to them. If submitted, it was done *ultra vires*. That was to be done under the seventh section, *after* a subscription had been voted. That was to be done by the county court of the county subscribing, by the mayor and council of the city subscribing, and by the board of trustees of the town subscribing. Can it for a moment be supposed that the legislature intended that the county judge should charge the county with such a large sum as the interest on $400,000, when it had in most positive statutes forbidden him to put any charge on the county, at any one term of his, exceeding $100? Was he alone, without the justices of the peace, to *agree* on the rate of interest to be paid ranging from the lowest rate to eight per cent., and to fix the time the bonds must run, ranging from the shortest to thirty years? With all due respect, such a construction is monstrous. None could execute the seventh section except a county court, composed of the justices of the peace and county judge.

(*d*) It is not probable that the legislature intended to vest the county judge with the power to execute section 10 of the act, which provides for the appointment of the board of commissioners of the sinking fund. It is highly improbable. The *financial* work of this board—and this is its *only* work—was too important to the people for the latter to be withdrawn from the protection of their justices of the peace in the selection of its members. The legislature at its December session, 1877—long *before* the deliverances of the appellate court of Kentucky in the case of Logan County *vs.*

Caldwell, in which there was a divided court—long before Cook *vs.* Lyon County, if this has any relevancy as authority in case now in hand, which is denied—in dealing with these Muhlenburg bonds, by what is called the "funding act" (see it in Appendix D), required the funding board to be elected by the *qualified voters* of each district, one for each district. (See sec. 2 of the act.) Can any one give a plausible reason why in the act of 1868 the legislature should have intended the county judge *alone* to select the sinking fund board, and in 1877 required the people to select funding board? At the passage of this last act there were no justices in commission. Hence the people had to be called on. It seems to me that this is a clear declaration by the legislature that it was never intended in the act of 1868 to clothe county judge alone with the power to control or deal with the "financial business" involved in the act of 1868, *except in those particulars where it was so expressly directed.* Unless one shuts his eyes, I do not see how to escape this declaration by the legislature of its intent in the previous act, that intent being just what appellants claim.

(*e*) If there was aught lacking in the previous inspection of the act to satisfy that the intent of it was administration by the justices of the peace in conjunction with the county judge, except where *in express terms* it is otherwise directed, section 19 must, it is respectfully submitted, conclude every doubt, every hypothesis to the contrary. The part of that section to which attention is called reads as follows (certain words are italicized by the writer):

"19. That in case the dividends upon the stock held and owned under this act by any county, part of a county, city, or town, and for which bonds shall have been issued, shall not be sufficient to enable such county, city, or town to pay its bonds at maturity, it shall be the

duty of the commissioners of the sinking fund to report such fact to the county court, city council, or town trustees, at least five (5) years before the maturity of said bonds; and if any county court, city council, or the trustees of any town owing such bonds *shall deem it proper to do so*, THEY may issue new bonds, having not more than twenty (20) years to run, and payable at such place as may be designated on the face of such bonds, bearing the same interest and secured in all respects as the bonds first issued are secured, and sell such bonds or exchange them for the old ones."

If it be insisted ever so strenuously that the decison in B. G. and M. R. R. Co. *vs.* Warren County (10 Bush., 711) rested exclusively on the question whether the act to be done was mandatory or allowed discretion, it can not be denied that the discretion allowed in this section is broader and more manifest than in the section under consideration in case *supra*, which won for the people by the test claimed to have been established in that instance—a test which, the writer submits respectfully, finds no place in reason when applied to *fix* legislative intent in dealing with the "*financial business*" of counties in Kentucky. But by their own vaunted test it must be conceded that, as to this section at least, the appellees can not claim that the county judge can act without the justices of the peace. Thus confessedly the interpretation of the act of 1868 insisted on by the bondholders, by their own tests as to intent of legislature in its passage, presents the anomaly of having at least one section which can not be administered by the county judge alone, and which requires the presence of the justices of the peace. Who is to *determine* when it is "proper" to "issue new bonds"? Certainly, by the test clamed to have been established in 10 Bush. case, *supra*, only the justices of the peace sitting with the county judge.

But section 20 of same act presents plainly another instance of very grave discretion to be exercised by the county court. That section is as follows:

"20. That in case a direct tax shall be levied to pay all or any part of the bonds of any county, part of a county, city, or town, issued under this act, at or before maturity, it shall be the duty of the commissioners of the sinking fund to cause to be transferred to the taxpayers, or their assignees, stock held by said county, city, or town, to the amount of the tax paid, upon the delivery to said commissioners of tax receipts, by the holders thereof; such receipts shall be negotiable by indorsement, and no stock shall be transferred for a less amount than one hundred dollars ($100)."

Who is to determine for *what part* of the bonds a direct tax is to be levied at any one time? Who is to determine whether tax shall be levied to pay a *part* or the *whole* at any one time? Who is to determine whether this tax or any part of it shall be levied *at* or *before* the *maturity* of the bonds? Surely not the county judge alone? To repose in him such a discretion would be monstrous. Here again is that very discretion so insisted on by appellees as a test, and when present in the legislative act admitted to put the administration of it in the county court composed of justices of the peace and county judge.

There is nothing "mandatory" in these two sections.

Then, by all tests as to ascertaining what the legislature meant by county court, here are certainly two sections where the county court intended was the county court composed of the justices and county judge.

This forces, if the theory of appellees prevail, the absurd consequence that in one part of the act the legislature meant by the words "county court" one thing, and in another part of the act, by the same words, quite a different thing. This is inadmissible in interpreting legislation.

There is a solution of this whole difficulty that is plain and reasonable. It is this:

Inasmuch as the settled policy of Kentucky from the foundation has been, and is now, to have the justices of the peace manage the "financial business" of the counties and to allow no debt or contract imposing a debt to be made by a county without the supervision of the justices of the peace, whenever the legislature uses the term county court in an act touching the fiscal affairs of the county a county court composed of justices of the peace and county judge is meant, unless in *express* terms it is otherwise declared. In all other matters legislated about, when county court is used in an act a court composed of the county judge alone is meant, unless otherwise *expressly* declared. Does not this rule relieve against all confusion? Does it not commend itself to common sense and technical reasoning alike?

I have announced a rule for ascertaining intent of a legislative act referred to county court for its execution in financial business, the reverse, perhaps, of that *flippantly* announced without any reasoning in the *unreported* case of Cook *vs.* Lyon County, invoked on behalf of appellees. In this case it is *dogmatically* stated that, unless the legislature shall *expressly* indicate otherwise in *fiscal* affairs, the county jude is intended. Yet, in the entire legislation of the State as to fiscal affairs of counties, there is no act to be found that in *express terms* ever so designated that the special financial business devolved by any particular act should be discharged by the county court composed of justices of the peace. When the opinion in this unreported case was delivered the court had declared in the 10th Bush. case, *supra*, that *without such designation* in express terms, a county court, without the justices of the peace, could not discharge the *financial* business provided for in the act

under consideration. The *intelligence* of this opinion as to *intent* of act is further illustrated by the *direct denial* that *bona-fide* holders of the bonds could be affected, even if the justices of the peace were intended to be constituents of the county court and were not called in or did not act in creation of the debt which the bonds represent. This in the face of the deliverance of the Supreme Court of the United States in case of Extein Norton *vs.* Shelby County (118 U. S., p. 425); Hill *vs.* Memphis (134 U. S., p. 198); Bissell *vs.* Spring Valley Township (110 U. S., p. 162); and Kelly *vs.* Milan (127 U. S., 139). It can be no presumption in me, therefore, to insist that the rule for interpretation as to intent of legislature in the use of the words county court is more reasonable and just than that supposed to be announced in Cook *vs.* Lyon County. To hold otherwise this court must ignore its own deliverances in the above-cited cases.

This court can not accept the construction of statutes by State courts, if that construction is unreasonable, or so unjust as, in the language of Justice Fields in Norton *vs.* Shelby County, *supra*, to "conflict with a rule of *commercial* or *general* law." "The Federal courts have an *independent* jurisdiction in the administration of the State laws, and ARE BOUND *to exercise their own judgment as to the meaning and effect of those laws.*" (Burgess *vs.* Seligman, 107 U. S., 34.)

Let it be observed that, at the time the transaction occurred by which the appellants are sought to be bound, no construction different from that now contended for on their behalf was ever given to such acts. Moreover, when the construction of this act first came before the courts, that construction was given in the lower courts now contended for by appellants, so reasonable did it appear at its first presentation. No cases, until *long sub-*

sequent, broached a different construction. The first one, Logan County *vs.* Caldwell, in which there was a divided court, was not decided until October 28, 1881, and was a construction of a statute quite different in its terms from the one now under consideration. The Lyon County litigation, in which the decision never was permitted by the court to be reported, and which *is not now a precedent* in the appellate court of Kentucky, did not come up for judgment until November 14, 1884.

(*f*) The act in *express* terms points out what part of it he is to administer. It has been attempted to avoid this as not significant because of the case of Stevens *vs.* White (16 B. Mon.). The question in that case concerned the appointment of a county court clerk to fill a vacancy. In the case no *controversy* was made as to the right of county court, composed only of the "presiding judge," to appoint the clerk of the court in the event of a vacancy, until the next regular election. The appellate court did not put the power on the ground that it was a ministerial act, and nowhere in the opinion recognized such tests for determining when the county court constituted of presiding judge alone, and the county court composed of the judge and the justices, might respectively act, as "ministerial," "mandatory," and "discretionary." The justices were never required to act by majority in the appointment of clerk of county court except by a *special* act. It was not FISCAL or FINANCIAL BUSINESS, and by the present constitution and the legislation under it the action of justices of the peace was CONFINED to fiscal or financial affairs of the counties Hence they had no right to appoint a clerk of the court.

(*g*) It must be noted that when the amending act of '68 was passed the "presiding judge" was one of the "commissioners" of the corporation *appointed* by the

legislature (see act in appendix A). Doubtless, in every county embraced in the act, the county judge was a commissioner of the corporation appointed in the same way by the general assembly. This commissioner was S. P. Love, and he was the county judge who administered the whole act so far as Muhlenburg County is concerned. It is hard to conceive that the legislature intended an act so seriously affecting the tax-payer should be administered by one who was an officer of the corporation demanding the subscription, and necessarily more or less its partisan.

Burgess *vs.* Seligman, *supra*, requires that, before this court will ever allow a decision of a State court to *influence* it ever so slightly in construing a statute as to its intent, the case shall be *"well considered."* In Yick Wo *vs.* Hopkins (118 U. S., 356), this court would not be influenced the least by a State interpretation of a statute, however well considered it appeared to be, because the State construction was against reason. There is in this instance no *"well considered"* case of the State to militate against the construction asserted on behalf of appellants.

The case of Logan County *vs.* Caldwell fails in this regard :

1. Because the court was divided.

2. Because among the rulings of the majority there is one so monstrous in wrong as to be repulsive. It was held by the majority that *an election ordered under an act that required a majority of the qualified voters to make the subscription was to be considered as held under a subsequent act* passed by the legislature TWO DAYS *before the votes were to be cast, when it was impossible, without a greater miracle than can be found in any sacred book, for the people in the remote county, where the election was held, to know*

anything about the subsequent act or even hear of it. By this latter act the subscription was to be made by a *majority of the votes cast.* Thus the voter who abstained from the polls, relying for protection under the first act under which the election was ordered and supposed to be held, and expecting his vote, though not cast, to be counted *against the subscription,* unexpectedly found himself counted for it. With all respect, I submit that an opinion which condoned such a fraud and permitted it to be successful, can hardly be regarded as "well considered."

The case of Cook, &c., *vs.* Lyon County, so far as it disposes of any question in that record—except, *perhaps,* the only and real one, the liability of a certain fund created by the county under an act of the legislature for one purpose to be diverted to another—was not considered at all.

One of the follies of this opinion has already been adverted to, *i. e.,* the broad intimation that even if the act had been administered by the county judge alone,—when it should have been administered by the county judge with the justices—a *bona-fide* holder of the bonds would not be affected. The opinion is further without influence for several other reasons.

1. All that part of it touching the construction and constitutionality of the act is pure *obiter dicta.* These were not *necessarily* involved in the case, and, as is confessed on the face of the opinion, were brought up by the cross-appeal of the party who *was successful below* and who was *successful also above.* There was another and main proposition on which the case was for the successful party below, not involving the necessity of considering or passing on either the construction or constitutionality of the amending act of 1868. It seems to me that an *obiter dictum* is

any deliverance by the court on any question not required to be disposed of in order to *affirm*, even if a litigant may present it foolishly, or for the purpose of "*hedging*" in the event the ground of his success below might not avail above. When a reviewing court has a clear and well-defined ground to *affirm* on, all that is uttered outside of that is *obiter dicta*. It is not permitted to reviewing courts, when affirming, to say on what grounds affirmance *is not* granted. All that is permitted is to state on *what grounds affirmance is* granted. Cross-appeals that bring up nothing, or can bring up nothing but *additional reasons* for the decision below, are not to be noticed unless, *in order to affirm*, it is necessary to consider these *additional reasons*. This was the nature of the cross-appeal in Cook, &c., *vs.* Lyon County. It was nothing more. It is a matter of amazement that any court should have been so inexperienced as to have noticed the cross-appeal at all. Reviewing courts are not to be converted into *moot* courts. The cross-appeal was nothing more or less in this instance than "feigned issues" which are not allowed to draw out from supervising courts *authoritative* rulings.

2. There is no reasoning on authority or principle, so far as construction or constitutionality of the act we have in hand is concerned, in the opinion. Without either one or the other there is nothing to show a "well-considered case."

3. There is, in addition to the "lame and impotent conclusion" already pointed out, this other. The *only constitutional question*, according to opinion, was the following one. I quote the language of court:

"Finally, it is urged that the above-cited act is unconstitutional, because it required the county court to submit to a vote any sum, however large, that the railroad company might name, as a proposed subscription to its road."

The only answer to this is as follows:

"We deem it a sufficient answer to this to say that the voters of the county had a right to accept or reject it as they pleased, and that its submission did not require its acceptance."

Surely no intelligent mind can receive such an answer as *responsive* to the difficulty presented. The gist of the constitutional objection is, necessarily, that the act gave to the corporation the absolute, arbitrary power to procure through the instrumentality of a majority, *however obtained*, the imposition on the minority of "any sum, however large, the corporation might name." Is the answer of the court at all directed to this? Surely not.

It is also fairly inferable that the opinion meant to assert; that the payment of taxes levied for interest on bonds *estopped* both the county and its citizens from all controversy as to validity of bonds on whatever ground placed. This is in the teeth of Extein Norton *vs.* Shelby County (188 U. S., 425), and a long line of decisions by the court.

The appellate court of Kentucky has refused to allow either of these two cases, Logan County *vs.* Caldwell, Cook *et al. vs.* Lyon County, to appear in their reports. It can not be denied that they both at least *attempted* to deal with *new* questions. If the court disposing of these cases is thus diffident, may not other courts, and may not counsel without disrespect, refuse to treat them as "well-considered cases"?

(*h*) There are in the funding act of 1877–'8 three sections which show beyond a cavil that the legislature did not recognize that the use of the words "COUNTY COURT" could or would be construed as meaning a court composed of the "presiding judge alone," when the "fiscal affairs" of Muhlenburg County were

dealt with, however mandatory the direction might be. The promoters of that act, who were the bondholders, were evidently of the same mind.

Section 7 of that act is as follows:

SEC. 7. That to pay the accruing interest on the bonds issued under authority of this act, and to provide a sinking fund for their redemption after five years or at maturity, an annual tax shall be levied by the county court of said county upon all the real and personal estate in said county, including all amounts given in under equalization law subject to taxation under the general laws of this Commonwealth. Said county shall have a lien on all property taxable or taxed under this act, and on other property of each tax-payer for the payment of all taxes payable by such tax-payer, which shall not be defeated by gift, devise, sale, alienation, or any means whatever.

Sections 19 and 20 are as follows:

SEC. 19. That for all the purposes of this act, the county court of said county, composed of the county judge alone, in case there be no justices of the peace of said county in commission, or in case a majority of them refuse to act or to concur with him, shall have full power and authority, and it shall be his duty to levy and impose the taxes herein provided for, but this grant of power shall not extend to taxation for any other purpose whatever.

SEC. 20. Should the county court, held by the county judge and justices of the peace, or by the county judge alone, fail for ten days after demand in writing to levy and proceed in good faith to levy and collect a tax as provided in this act, then, and in that event, it is hereby made the duty of the circuit court or judge thereof in vacation, upon being informed of such failure, and satisfactory proof thereof being made by any *bona-fide* bondholder or his attorney, to levy and have collected a tax sufficient to pay off the principle and semi-annual interest on past due bonds or coupons issued in pursuance of the provisions of this act.

I submit with great confidence that these sections of the act cited most explicitly recognize the rule of interpretation laid down by me—that whenever financial business of a county in Kentucky is concerned, county court means presiding judge and justices of the peace, unless otherwise expressed; that as to all other matters, the presiding judge alone is intended, unless otherwise expressed.

When the legislature has thus declared, who shall gainsay?

It is claimed that Merriwether *vs.* Thompson has settled the construction of the act. I respectfully submit that it has done no such thing.

The facts in that case occupied too narrow a space to permit the presentation now made. There was a judgment submitted to against the county of Muhlenburg by its then presiding judge, one Thompson, on some interest coupons. This submission conceded, so far as *that* case was concerned, and the parties to it, that the act was to be executed or administered by the presiding judge alone. After yielding to the creation of the bonded debt in all its phases by a county court, composed of the presiding judge, the only question made was as to his right to perform the last duty imposed by the act, a levy of the tax to pay the interest. This aspect presented the county in the obnoxious attitude of seeking to escape payment of a judgment submitted to, on a bare technicality. This was an embarrassment of itself, very weighty against the county. It was an immoral position on the *face* of the record. Courts naturally, if conscientious, strain the law to have the right done. No such presentation was or could be made on the record of that case as is now made. The ruling in that case ought to be confined to it alone, and is not fairly to be extended beyond it. If at all in the way of dealing with

the argument now made for appellants, it should be passed by or refused any authority in disposing of the questions. I respectfully submit that in this last suggestion the court is asked to do no more than it has done several times in the past when justice required. The instances will at once occur to the court without citation of cases. I will, however, refer to one instance with which I was professionally connected. The case of Pettigrew *vs.* U. S., 7 Otto, 75 U. S. There the precedents, which compelled Judge Emmons to decide against his own judgment, were quietly ignored because *justice* required it.

Concluding this branch of the case, and using the language of the opinion in the 10th Bush. case, I respectfully submit that "in construing this act as vesting the right" to administer it "in the tribunal organized with the power to control the expenditures and finances of the county, is in harmony with the general law in regard to the jurisdiction of the county court, and expresses the true meaning and intention of the legislature."

III.

In considering the third error assigned we ask the court to carefully read the petition or bill of appellants.

The court must, in order to act intelligently on this error, consider the amending act of March 9, 1 67 (2d vol. Laws of Kentucky, 1867, p. 425-26, Appendix B to this brief). This act had been before the people with full notoriety for nearly one year before the passage of the act of February 24, 1868. *Under this* act the question of subscribing for stock in the railroad had been agitated and considered. (See evidence by deposition *passim.*) Especial reference is made to Roark's deposition and exhibit to it. (Record, 150-157.) This will be more instructive as to the deception practiced on the

people than anything counsel can suggest. The cross-examination of the main witness for appellees, S. P. Love, who was the county judge ordering the election and commissioner of the corporation for whose benefit the subscription was to be secured, shows that at the time he made the order for the election he was by no means clear under which act he ordered it. (See the cross-examination in his deposition, commencing on page 229 of Record.)

This act of March 9, 1867, was repealed by a clause in the act of February 24, 1868, without *the slightest notice to the legislature in the title* of the intended repeal. That act required the assent of a majority of the *qualified voters* to the subscription. It will not be denied that this act was to be administered by justices of the peace acting in conjunction with presiding judge according to the test supposed to be fixed in the 10th Bush. case.

The order of the county judge directing the election is as follows:

"On motion of said Thomas, it is ordered that the question whether the court shall subscribe for and on behalf of Muhlenburgh County for four hundred thousand dollars of the capital stock of said Elizabethtown and Paducah Railroad Company is hereby submitted to a vote of the qualified voters of Muhlenburgh County at an election to be held at the several voting places in said county on the 30th day of May, 1868, between the hours designated by law. It is further ordered that the clerk of the court prepare poll-books for the several voting places, with two columns, one to be headed for the railroad subscription, and the other against the railroad subscription.

"It is further ordered that the sheriff give notice at the several voting places, at least 10 days before said election, in the mode prescribed by advertisements posted at the court-house door and other several voting places in said county."

The sheriff did not, indeed could not, give a more *instructive* notice than the language of this order, even if he had so desired. There is not the slightest information given in the order, so far as the people are concerned (for they were dependent on the notice of the sheriff for information as to this matter), that the election was held under any other act than that of March 9th, 1867, with which they were familiar and under which they had discussed the subscription. All the proof shows that the people, with the exception of the county seat, Greenville, where the partisans of the railroad company did "most congregate," were ignorant of the amending act of February 24, 1868; that the act could not and was not published in the county and could not have been so published; that owing to the size, extent, and peculiar physical circumstances of the county it was impossible for the voters of the county to be informed within ten days that the election was to be held under any other act than that of March 9, 1867. Under that act the failure to vote defeated the subscription.

It is vain to deny that the purpose of the company was that the people should act under this belief, and that as many as possible who were unwilling to subscribe should stay away from the polls. It had become evident that the company could not command for a subscription a majority of the *qualified* voters. This is fully evident from the proof, both by record and deposition.

The entire ignorance of the people that they were voting under any other than the act of 1867, and that they knew nothing of that of 1868, is manifest from the returns of the election. (See these in Record from page 27 to 49 inclusive.) Not a single return, save one, states, that the question submitted and voted on was the one ordered to be submitted by the order, except the return

at Greenville, the county seat, where the lawyers of the railroad and its special partisans were. Not a *single return* shows that the vote was taken under the act of 1868. The order itself directing the election quoted above, on which the sheriff acted, is cautious to refrain from advising the people that they were voting under any other act than that of 1867, with which they were familiar. The fraudulent character of the whole transaction is exposed in the petition of appellants, from which I cite a passage as follows:

"It is true that it was the purpose, doubtless, of the said railroad company to destroy as far as could be done both the opportunity and power of the agents of the people in the various counties to interpose for their protection. The act is rank with every dishonest device to deceive, hoodwink, surprise, and betray the people into a ruinous contribution to the said company, for it was more properly a contribution than a subscription of stock. So far as the said company dared impose on legislative inadvertence to the disadvantage of the tax-payers it was done; but however skillful, however adroit the company was in this respect, yet the justices of the peace, if convened in court as they should have been and as has been shown was the legislative intent, they could have examined the return of the polls and gone behind the 'returning board' composed of the county judge and the county clerk and refused to issue the bonds on the ground that the question had not been properly submitted to the voters at the several polling places, and that a fair and full expression of the wishes of the people had not been obtained, and under the circumstances could not have been obtained. This course should have been taken by the agents of the people if actuated by good faith toward them and if influenced by a desire to protect their interests.

"The plaintiffs allege that if the justices had been convened and the county court for claims had been constituted as the law required and as the legislature intended,

the bonds of the county of Muhlenburgh would not have been issued on any such election as that pretended to have been had on the 30th day of May, 1868. So it was, may it please this honorable court, by the most flagrant violation of law and contrary to the plain intent of the legislature in the act of February 24th, 1868, bonds of the county of Muhlenburgh, or obligations purporting to be such, were issued to the amount of $400,000, a sum almost equal at that time to one-fourth of the assessable property values of the said county. The taxation for the payment of interest and the principal of these bonds when added to that for State, county, and school purposes aggregate a tax burden fully reaching that point long since fixed by political economists when taxation becomes confiscation. Now, this debt, if valid, has reached nearly the sum of eight hundred thousand dollars. This is a sum utterly beyond the capacity of the tax-payers of Muhlenburgh County to pay without impoverishing them and rendering them incapable of contributing effectively to the support of the Commonwealth and the local government of the county. Thus the State and county are both injured and impaired in power and facility for the essential functions of government. In this way the maintenance of this pretended debt against Muhlenburgh County is utterly against public policy and strikes at the interest of the State. The assessable property values of Muhlenburgh County, when the pretended subscription and the pretended issue of bonds were made, was a little the rise of two and a half million. The assessable values of the said county are now a little the rise of two millions or two and not quite a half, including the railroad property in said county. It will be seen that the assessable values of the county have not increased in the same ratio with the said pretended debt. It is submitted respectfully that there is a point at which the courts will not permit taxation in behalf of interests not pertaining to and not of governmental functions to interfere with the capacity or ability of the tax-payers to supply the taxes necessary to carry on and conduct the primary and absolutely necessary work of government."

No one can read the history of this affair, without exclaiming in the language of the old play:

"Oh! but that was a knavish piece of business."

It is insisted that this fraud or enough of it was apparent on the face of the public records to put all on their guard, and there could be no innocent purchaser of these bonds.

It can not be denied that the frauds existing in the transaction, if practiced in a contract between individuals, would vitiate the contract. It is insisted that there can be no shelter under a legislative act for the fraud, for the legislature can not authorize a fraud.

The act of 1868 requires that the court ordering the election shall fix the time when it is to be held, and the length of notice to be given of its holding so that it is held within thirty days. The court did not fix notice, but left it to the sheriff. The proof is without qualification that this notice was utterly inadequate to inform the people. The time of holding the election was only fifteen days, including the day on which the order was made. The fraudulent purpose in the matter of notice is thus presented in the pleading of appellants.

"It deprives the people of the protection of the regularly appointed officers of elections under the general law, and so enacts as to have the opportunity of getting officers of election favorable to the railroad company and in their interests. The board to examine the returns is constituted differently from that provided by the general law with evidently the same end in view. To make the fraudulent purpose of the act more manifest, it will be observed that in the second section of the act providing for a subscription of stock by the county only thirty days at farthest are allowed within which the vote is to be taken, while in section five of the act for taking the vote for a subscription by a precinct, only a very small fragment of a county, it is provided that the election shall not be held under thirty days and

may be extended to sixty days. Why this difference between a subscription of the whole county and a single precinct? Surely in the latter it would require less time to notify and put on their guard the voters than in the former. There is but one answer to this. The company evidently counted on the advantage of a large number not voting in the county for want of sufficient notice of election to enable the voters to act —an advantage which, it is seen, was obtained by the company in Muhlenburgh County. But in the matter of subscription by so small a division of the county as a precinct no calculation could be made on want of notice, and therefore the only chance of the corporation in the precinct was to have plenty of time to manipulate in the various ways by which a vote may be forced, bribed, or imported. Now, it is respectfully submitted that where the machinery for fraud was so elaborately and carefully provided for in the act, to believe for a moment that this machinery was not used for the object to which it was adapted would be a credulity far from creditable to the most ordinary intelligence."

This court has so often held to the utmost strictness in the *sufficiency and fairness* of notice in the matters of election to impose on local communities contract debts, that it is not necessary to cite cases.

It has already been shown, discussing the fraud, that the election was not ordered as required by the act by reason of the failure of the authority ordering it to fix length of notice as to time when it was to be held, and leaving this to the sheriff.

It has likewise been shown that the election was not held as ordered, because the poll-books fail to show, except in the case of one precinct, that the proposition directed to be submitted by the order directing the election was submitted. With this one exception the returns from the other precincts utterly fail to show in many instances what proposition was submitted, and show that in various precincts different propositions

were submitted. In some there is not the slightest indication as to the *amount* on which the vote was taken.

The order directing the election prescribed that poll-books should specifically show on their face the proposition submitted. The *order*, notice of election, and the returns utterly fail to show that the election was held under the act of 1868.

These matters appeared on the face of the public records, of which all must take notice in dealing with the county.

It is insisted that by reason and authority these matters invalidate the election and, by consequence, the bonds.

It is common to escape the difficulty of want of knowledge and opportunity for knowledge as to an act passed by the dogmatic assumption that every act of the legislature is a law from the date of its passage, *binding* on the people, whether they know it or not, whether they have had or not reasonable opportunity for knowing it. This is only true of such acts as concern matters purely governmental, such as police regulations and matters that concern the general public. It can not, it ought not, to be true, when the act only gives authority to certain persons to make a *contract* with a local community. The legislature can not dispense in such case with the plain rule of fair dealing that both parties shall have a reasonable opportunity of knowing what they are dealing about. Indeed in most of the States, so unreasonable has been the rule affecting the public with knowledge of an act from the date of its passage, that even in legislation concerning police or purely governmental affairs a certain time has been fixed for the law to take effect after passage, for the purpose of affording time and opportunity for the law to become generally known.

It is pressed with earnestness that the whole object of the act was to build the road, not to derive dividends on stock. The act does not so read. It is effusive in representing that dividends on the stock of county would pay both interest and principal. That the promoters were honest in this is not probable. They, however, deceived by these representations all they could, and after they had effected their object, sold the road, putting it out of the power of the company to perform its solemn pledges, and left the county "to hold the bag."

IV.

CONSTITUTIONALITY OF THE ACT.

For a proper consideration of the questions involved at this point, it is necessary to examine the act incorporating the railroad. It differs from any other charter I have ever observed. Commissioners are appointed first to solicit and purchase subscriptions of stock to build a railroad from Elizabethtown to Paducah, "*which railroad is hereby incorporated.*" When three hundred thousand dollars of stock are subscribed, the road is the property of the parties subscribing, and they become the company. An organization is, however, permitted on less sum for the purpose of electing officers. (See act in appendix.)

That no authority in the State, whatever it is—even if it be the largest majority—can arbitrarily impose burdens on the humblest citizen, is recognized as the foundation of all government, because it is the foundation of associated life. A beautiful writer has said it "is the primal compact and bond of society, not graven on stone, nor sealed with wax, nor put down on parchment, nor set forth in any express form of words by men, when of old they came together; but implied in

the very act that they came together, presupposed in all subsequent law, not to be repealed by any authority, not invalidated by being omitted in any code; inasmuch as from thence are all codes and all authority."

By this principle the English judge restrains the wayward acts of even an omnipotent parliament, that legislates without the restraints of a written constitution.

It is really embodied in the preamble of American constitutions. Among these in none more emphatically than in the constitution of Kentucky, *under which* this act was passed, and by which it is to be tested—the constitution of 1850. Its preamble declares that it was ordained "to secure to *all* the citizens of that State the enjoyment of the rights of life, liberty, and property, and the pursuit of happiness." It is further presented in section 2 of Article XIII., which declares "that absolute, arbitrary power over the lives, liberty, and property of freemen exists nowhere in a republic, not even in the largest majority;" and in section 3 of same article, which declares that "the right of property is before and higher than any constitutional sanction."

How can the act of 1868 be reconciled with these provisions? In the majority opinion in the case of Slack, etc., *vs.* Maysville and Lexington R. R Co., (13 B. Monroe, commencing on page 1), an opinion that has been more mischievous in its consequences than any judicial deliverance ever made, this reconciliation is *attempted* on the ground that the legislature had fixed in the act then under consideration a *limit to the amount that* the majority should impose on the minority, and thereby had passed *its judgment* as to the amount that might be subscribed. The majority likewise refused to test that act by the constitution of 1850, because it had been passed under the preceding constitution. In regard to the act of 1868, neither of these incidents is

present to aid the court in tiding over these provisions of the constitution and the great principle underlying them. The legislature passed this act under the constitution of 1850, and did not fix a limit as to the amount with which a majority of votes cast might charge the minority, but allowed the company to arbitrarily fix the amount—nay, more, allowed the company to say that the subscription must be of such a sum or nothing, leaving the people no right to say what sum they could prudently subscribe.

I will here use, to some extent, as my own, the language of one of the most gifted judges, in dealing with an act somewhat of this sort, adapting it, of course, to the act of 1868.

What is the simple purport of this act so far as it concerns the subscription of stock and its incidents?

Let it be stripped of its disguises, divested of the tautological verbiage with which it is cloaked and covered, and let it stand out in its true character, its genuine proportions, and its naked deformity—and what is it? It is a scheme and device by which a private corporation has been allowed the privilege, in its discretion, to use the machinery of an election to be held in Muhlenburg County, at which its own interested agents and members, together with all the non-tax-payers in the county, may combine and vote down the disinterested property-holders; to force from an unwilling people contributions for the benefit of this company; to take from them, without their consent and against their solemn protestations, their private means or property, without any previous compensation whatever, not even then for "public use," but for the use of a private corporation. In other words, this company, upon the sole condition of their being able previously to get a majority

vote, though made up of its own members, officers, agents, and those qualified voters who owned no taxable property at all, may proceed to force the county to contract a debt for *any amount demanded by the company*, and to forcibly take the money and property of the citizens from them, and against their will, and use the agency of the sheriffs to make the seizures, and to apply the means thus procured to the private use of the company.

This was part of the act and not a law of itself; it had no binding effect as a law; the sovereign legislative power of the State did not enact it; the action of the legislature was confined merely to drafting it, as a project; their power was exhausted upon the scheme after they had it written, published, and submitted to the other most unusual and extraordinary and private agencies appointed to pass it or reject it, to let it remain a dead letter or give it force and vitality; according to the discretion of those private agents, no election could be held, no stocks subscribed, no county debt created or special tax imposed to pay such debt, by virtue of this act, unless this company should consent to it, and decide that the steps necessary to give it force should be taken. This company had the power to reject this part of the act, and it could not become a binding law without its consent; to that extent, at least, the legislative power of the State was delegated to a chartered stock company; for the company had the power to give, or refuse to give, the power of imposition on the minority; if refused, there could be no election, and if no election, there could be no law, and all that part of the act providing for the subscription would have remained still as it came from the hands of the legislature, a dead letter, a mere draft or project, not to be enacted or executed because the company did not

like it. But should the company conclude to withdraw its opposition, and permit it to be enacted, they could make their request for an unlimited demand, for an election to be held on the shortest notice, not sufficient to advise the people as to what they were called on to decide, as was done; submit the project to the voters and permit them, if a majority could be procured at such election, to pass upon and adopt this project, as furnished and written out for them. Thus the legislature cast off from their own shoulders the responsibility of enacting this part of the act, and thrust it upon this private corporation, as a *quasi* upper house, or house of lords, and upon Tom, Dick, Jim, etc. (if enough of them to make a majority of the qualified voters actually casting their votes), as a sort of lower house of commons. That is to say, when the legislative power was applied to and requested by the company to pass this law, they replied, "No, we will not, but you and the voters may, if you think proper; and if you do pass it, then you may have the mayors and councils of the cities, and the county courts of the counties, named in the act, and the sheriff officers of the said counties, and the said city collectors, at your service. They shall be compelled and forced to make and register the edicts required, and to give the bonds of the cities and counties to you, to collect and pay over the required tribute; and the stubborn and refractory voters who voted in the negative, when the yeas and nays were taken in this substitute for a lower house, shall be compelled, however contrary to their wishes, to contribute to pay the principal and interest of the debts contracted, in spite of their opposition." Is this a valid act of the legislature? Is such legislation authorized by the constitution of 1850, or by any written constitution of any other civilized state or nation in the world? I believe not; at least, I am sure it ought no to be.

If a government, according to its constitution, is republican in its principles and *representative* in its form, there are many things which it can not do, and many powers which it can not rightfully exercise, although they be not even named, much less expressly prohibited, in the constitution. It has no right to take from one citizen the honest earnings of his lawful industry, or to take his lawful property forcibly against his will, in whole or in part, and give it to another citizen, or to a corporation (which amounts to the same thing), or to authorize a corporation or any number of the people to do so. It has no right to force him to abandon his own lawful profession and business, pursued to promote his own happiness, and to earn his own subsistence thereby honestly; and compel him to adopt and pursue any other against his will. It has no right to compel a citizen, or to authorize others to compel him, to make a contract with a corporation, or another citizen, and to exchange his property, labor, or money, or any part thereof, for the stock of such company, or for any other thing, upon arbitrary terms, contrary to his own will and to his views of his own duties and interest. It has no right to compel him to buy stock, employ a physician, fee an attorney, or hire a servant. He has a natural right of which no government can justly divest him, and of which he can not legally divest himself, to be a free man and not a slave; to be his own physician, his own attorney; to be his own servant, and to employ all his own means and capital in such honest and lawful business as, in his own judgment, is best adapted to the promotion of his own well-being and happiness; always provided he does not interfere with or encroach upon the equal rights of others. I do not concur in the opinion, therefore, entertained by some, that there is no limit to the legislative power of this government, except

it be found in some express prohibition contained in the constitution itself. But even if this position be assumed as sound, yet I think that the act in question and the power exercised in its passage has been substantially prohibited in the present constitution of Kentucky. It is substantially prohibited in the solemn declaration made in convention, as contained in the short but comprehensive preamble to the constitution of 1850, ordaining and establishing the same, as instituted expressly "to secure to all the citizens the enjoyment of the rights of life, liberty, and property, and of pursuing happiness." Now, the act in question defeats the purpose, as thus expressed, for which the government was formed; for instance, of securing to the citizen the enjoyment of the rights of property, etc., it destroys that security; not only so, but takes it from him without compensation, against his will, to give it to a corporation. The legislation in question disregards, therefore, one of the most important objects for which the government was formed; that is, to secure the rights of property. If it is permitted that the citizen's property be taken from him against his will, and without compensation, and be given to others by any sort of device or indirection, however it may be disguised, then will the enjoyment of the rights of property, and, in fact, the satisfactory enjoyment of life itself ("for you take away my life, if you take away the means whereby I live withal,") be rendered insecure and worthless.

The only ground on which acts of the legislature allowing minorities to be bound by contract burdens outside of the ordinary and usual business appertaining or *necessary* to local governments have been rested, is that the legislature not only decided that the purpose to be served was *beneficial to the local community*, and sufficiently so as to call for legislative grants (a prin-

ciple that ought never to have been recognized), but likewise decided what amount might be imposed on the minority or placed a limit beyond which the majority could not charge the minority.

Even when exercising this judgment, the legislature must be careful not to allow burdens to be imposed which will confiscate. (Preston *vs.* Rudd, K'y Law Reporter, Vol. 7, p. 810.)

But in the act of 1868, under consideration, the legislature, while deciding that a subscription to Elizabethtown and Paducah Railroad Company by the people of Muhlenburg County was for a "beneficial local purpose," did not decide as to the extent of the burden that might be imposed—fixed no limit to the amount. As to this, it divested itself of all control and vested it in the railroad company and such majority of votes cast as the railroad company could *procure*, thus leaving the way open to the imposition of a confiscating burden. This license was availed of by the company to the "top of the bent," and, as abundantly appears, a confiscating debt was created. The people of the county never could pay it, never can pay it, and keep up necessary local government. The latter is guaranteed in the preamble to the constitution. To secure it the constitution was made.

The abitrary power in this act is more manifest than in the act condemned in Yick Wo *vs.* Hopkins (118 U. S., 356).

If this act is not in violation of the principle that is at the very foundation of all free government and of the constitutional provisions cited, there can be no act framed that will violate this principle and those provisions.

It has been assumed and acted on that the thirty-sixth section of Article II. had been held in the case of Slack

vs. M. and L. R. R. Co. (13 B. Mon.) as not applicable to debts contracted under legislative authority by counties. Such is not the fact. Here is what the majority of the court said :

"We do not, however, regard it as necessary now to decide, and we do not decide, whether the thirty sixth section of the second article might not be construed as embracing in its spirit a county as well as a State debt."

As before stated, the majority of the court refused to apply the present constitution to the act considered, but insisted on testing it by the former constitution, under which it was passed.

I again use the language of a distinguished judge: Art. 2d, 36 : "No act of the general assembly shall authorize any debt to be contracted on behalf of the commonwealth (except for the purposes mentioned in the 35th section of this article), unless provisions be made therein to lay and collect an annual tax sufficient to pay the interest stipulated, and to discharge the debt within thirty years; nor shall such act take effect until it shall have been submitted to the people at a general election, and shall have received a majority of all the votes cast for and against it."

The Muhlenburg County subscription of stock and the bonds issued to the railroad company are embraced within the above provision, and not within the exceptions referred to therein.

Now, I will not assert that the precise letter of all or either of the constitutional provisions above quoted have been expressly violated by the acts and proceedings of which the plaintiffs have complained; but this I will say, if those acts and proceedings are allowed to be established as precedents, and if they are sanctioned as valid and binding upon the cities and counties

and the minorities of the inhabitants residing therein, then the obvious design and purpose of each and all of those provisions will be defeated, overthrown, and shamefully evaded, by a resort to puerile contrivances and unworthy subterfuges discreditable to the legislative department of the government, and by which the deluded, nay, defrauded, citizens of the State can be, and in the end will be, deprived of all the checks, limitations, and guards intended to furnish to them protection against onerous public debts, against the loss and destruction of the credit and honor of their country, and against merciless and grinding public exactions and corporate oppressions, which they honestly and confidently believed they were securing for themselves and their posterity by the adoption of the present constitution, in which they are recorded.

It will not be controverted that by the 36th section of the second article the legislature would be prohibited from incurring a public debt on behalf of the people of the State by a subscription of stock in this railroad company, or by the issue of State bonds in aid of the enterprise in view, directly or indirectly, unless the law by which it was authorized should provide for the imposition of a tax sufficient to pay all accruing interest, and the principal in thirty years, and unless such law should receive the approbation of a majority of the voters of the State, expressed at a general election. If the legislature could not then authorize such public burdens to be imposed upon the citizens of the whole State, then, inasmuch as all the citizens of the State are necessarily citizens of the counties into which it is divided, and many of them of the towns and cities within the counties; as the whole State includes all its parts, and as the fact that being a citizen of a city, town, or county does not deprive the party of any of his constitutional privi-

leges and rights as a citizen of the entire commonwealth, then it follows that no power exists in the government to authorize such debts to be contracted by the towns, cities, or countries, or by any fractional part of the State, so as to bind the citizens of the State resident therein; for if this power is admitted to exist, and if it should be exercised, the result would be that the inhabitants of that portion of the commonwealth thus saddled with public burdens would be deprived of all the benefits and advantages which they believed they had secured for themselves, in common with the other citizens of the State, by the said 36th section, and those advantages still would remain and be enjoyed for the time being by the residue of the citizens of the other parts of the State unimpaired; and in this view the extraordinary state and condition of things would be presented of a commonwealth having a constitution adopted nominally and formally for the government and protection of *all* its citizens, which furnished most valuable privileges and secured most important protection against injury and oppression to a favored portion of the people, but which it denies to other portions of the inhabitants less favored, and who are left without such protection and security, a prey to the unchecked and irresponsible dominion of local majorities. If, on the other hand, local burdens of like character with those imposed upon the plaintiffs and the citizens of Muhlenburg County should be imposed, through the agency of local authorities, upon the people of the whole State, as included within the one hundred counties composing it, then the pernicious example is presented of a whole community having been deprived by legislative usurpation of the protection which they thought they had secured by the thirty-sixth section of the second article of the constitution, which they had chosen

for their government by an almost unprecedented majority. In the one case, the constitution would be efficient only for the protection of a part of the citizens of the commonwealth, leaving the residue unprotected and subject to burdens and taxes without limit, from which the favored and protected portion would be exempt; in the other case, the constitution, in respect to the thirty-sixth section, would be a dead letter, and every citizen in the State would be deprived of its protection; and millions upon millions of public debt, and taxation piled on taxation, may be riveted upon all the present inhabitants of the State, and their posterity, for an indefinite period of time to come, severally incurred and imposed by each and all the counties, towns, and cities, in the same manner and by the same authority as pursued in the instance of Muhlenburg County, and the constitutional design thus would be wholly defeated. A retrospective view of the history of Kentucky for a few years preceding the meeting of the convention which formed the present constitution would furnish a most satisfactory clew to the purposes intended to be secured by the insertion therein of the said 36th section; it was to save the credit and honor of the State, already much involved and likely to be endangered by a profligate recklessness in contracting public debts for the further prosecution of visionary and unproductive schemes of internal improvements, and to save the citizens from heavy and oppressive taxation, tending alike as an incumbrance upon landed property, thus greatly diminishing its value, and as a drain upon productive industry, thus absorbing its proceeds, to reduce the population, to prevent immigration to the country, and to impair the general prosperity of the State. If the cities and counties are severally allowed to contract debts and levy

taxes upon their inhabitants to pay the interest and principal thereof, at the will of the local majorities, regardless of the restrictions in the 36th section, it may, and I think would, soon produce all the disasters indicated, and inflict, moreover, unjustly upon the minority of the citizens residing in towns and counties that prudently avoided this reckless policy the wrong and injury of compelling them to bear their portion of the burdens of an indebtedness created exclusively by other counties and cities for their own peculiar benefit.

If forty or fifty of the large counties shall in this way incur debts and issue their county bounds amounting in the aggregate to ten or twelve millions of dollars (and the tendency is speedy and onward toward this result, as is manifest from the late legislation upon this subject), then, under the enormous load of taxation upon the inhabitants and under the apprehension of county bankruptcy and repudiation entertained by the individual and corporate bondholders, a great cry would be raised, and an overwhelming influence, indirect, combined and corrupt, would be brought to bear in favor of the assumption by the State of all the county debts consolidated into one mass with the existing State debt; and the numbers and influence would thus soon become sufficient to fasten upon the whole State the debts of all the cities and counties by a law containing the provisions required by the 36th section, because the majority of the counties and the majority of the voters resident therein would be deeply interested to render their power available, in order that the other counties in the State and the inhabitants thereof should be compelled to assist them in bearing and meeting their liabilities; and in this way (when perhaps it could be effected in no other) the great object intended to be secured by the present constitution may be defeated, the sinking fund

exhausted, the people oppressively burdened with taxes, the public debt enormously increased, and, finally, the credit and honor of the State impaired, if not destroyed.

The argument upon this branch of the subject, as presented in the published opinion of the majority of the court, it appears to me, is conclusive and unanswerable. I will not attempt further to add to or enlarge upon that argument; but, approving, I adopt it as part of this dissent, as furnishing some of the grounds upon which I have based the conclusion to which I have arrived, and from which it may be hoped that the majority of the court, in a case which, in their judgment, should be embraced by the provisions of the present constitution, would induce a similar conclusion. The argument to which I refer commences as follows: "II. In approaching the question of the constitutional validity of the legislative acts under which this tax has been levied we are met," etc., and concludes as follows, to wit: "And with a full view of the burden of taxation which was to accompany it."

It is regretted by me that the court should have been prevented, in the present case, from deciding the question as to whether counties cities, and towns, as local communities, since the adoption of the present constitution, can or not be authorized, directly or indirectly, in any form, to incur public local debts, by legislative acts which do not contain the provisions prescribed by the 36th section of the second article thereof, and which should not be ratified in the manner required by that section. It being the opinion of the majority of the court that the provisions of the present constitution do not apply to this case, it was not necessary that the question above referred to should have been decided by them. Differing in judgment, however, with the majority, with respect to the applicability of the

36th section of the second article of the constitution of June, 1850, to the present case, I conceived it to be my privilege and duty to express my opinion upon that question, and briefly to offer some of the reasons upon which it is founded.

But does not the charter, original and amended, of E. & P. Railroad Co. come *literally*, as also in spirit, under this 36th section? Is it anything more than the direction by the State that the road be built, giving the road to the individuals who would build it, and finally, finding that the money to construct could not be got in that way, licensing the road, through a majority of votes cast in certain counties to coerce the funds necessary to build it? It is to be noticed that individual subscribers only pay in installments as called for, while the coerced subscription of the counties is to be paid at once by negotiable bonds. Is it anything more than a device to evade the 36th section and gradually cover, through county action, the citizens of the State with the very debts provided against by this section? It is respectfully submitted that this is about the sense of it.

It is insisted by the appellants that the act of 1868 is in violation of section 37 of same article, which is as follows: "No law enacted by the general assembly shall relate to more than one subject, and that shall be expressed in the title."

The title of the act gives not the slightest indication that a previous act was to be repealed. Certainly the evil intended to have been prevented by this inhibition is fearfully present in this case. Had the legislature been advised by the title of the bill that the amending act of 1867 was to have been repealed, there is reasonable ground to believe that so much of the amending act of 1868 as relates to county subscriptions would not have been passed. If the act of 1868 is not in this regard a

violation of the section of the constitution last invoked, then it is difficult to conceive of one that would be. It is redolent of the fraudulent purpose to conceal from and deceive the legislator, which is proscribed by this constitutional provision.

Both the act of 1868 and of March, 1878, provide that the *whole* of a tract of land, when levied for satisfaction of taxes due in payment of interest and principal of bonds, shall be sold, and not just so much of it as may be *necessary* to pay the taxes as by the general law is provided for in the case of execution sales for all other debts. It is likewise provided that no redemption shall be allowed by the owner unless he pays *all* taxes, of whatever description these may be, that may be charged against the property. The act of 1878 also declared these railroad taxes a lien on the property of the inhabitant of the county, whether in or out of the county, prior to all other liens, and which no transfer can relieve either the property or individual of.

These particular taxes follow the unfortunate inhabitant of Muhlenburg County wherever he may go, even to "the uttermost parts of the earth." He can no more sell his property without the consent of the Elizabethtown and Paducah Railroad Company than could an old feudal vassal without the consent of his superior lord. It is useless to comment on these terms of the two acts. Such legislation has never been attempted in any free country before or since. These conditions are at war with the underlying principles of all free government, and necessarily create forfeitures without "office found," and which are beyond all precedent, onerous, and utterly unjust.

It is insisted that the construction and application of the provisions of the constitution of Kentucky are *now*, since the passage of the 14th amendment of the United

States Constitution, wholly under the control of this court; that the State courts can not construe for it. Indeed, there never was any good reason why this court should accept the Constitutional interpretations of State courts, unless those interpretations met its approval.

The 14th amendment, however, in its 1st section now requires this; for otherwise this court would be at the mercy of the State courts in determining whether a citizen of the United States had been abridged of his privileges or immunities, or whether "any person" had been deprived of life, liberty, or property without due process of law, or whether "any person" within the jurisdiction of a State had been denied "the equal protection of ths laws." To subject this court, in the application of this section of 14th amendment, to the interpretations and construction of the State courts, would be to nullify it.

The act not only forbids the *making* of any law, but also the "*enforcement*" of any law, it matters not at what time made, which does the thing inhibited.

Again, this court, in the application of this amendment, must apply it according to its own canons of a free government—according to the Federal interpretation of what is an invasion of the rights of the citizen. The Federal government was ordained to preserve liberty in the Republic and has actively entered upon that work. I do not think that I need, at any length, to argue that under Federal conception of the "rights," "immunities," "privileges" as to life, liberty, and property, the act of 1868 can stand for a moment. It does seem that the case of Yick Wo *vs.* Hopkins (118 U. S.), before cited in this brief, settles the question as to this act as well as that of 1878, called the funding act, conclusively for appellants under the 14th amendment.

If the appellants fail, they can never be reproached for want of justice in their cause.

T. W. BROWN,
for Appellants.

ADDENDUM.

After that part of my brief on the removal of the cause was in print, the record was amended by bringing in the answers of Trousdale and Alexander to the interrogatories propounded to them. These answers, if ever seen by me, were forgotten. But it is submitted with great confidence that these answers acknowledge everything charged against them.

T. W. B.

APPENDICES.

A.

Laws of Kentucky, Chapter 1689.

An act to incorporate the Elizabethtown and Paducah Railroad Company.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

[Commissioners' names. May open books.]

§ 1. That James Guthrie, H. D. Newcomb, W. B. Hamilton, J. B. Wilder, J. B. Smith, W. C. Hite, R. A. Robinson, Z. M. Sherley, and O. W. Thomas, of the city of Louisville; Samuel B. Thomas, George L. Miles, Henry B. Helm, Bryan R. Young, Martin H. Cofer, Elijah Hansborough, and Henry A. Cecil, of the county of Hardin; W. L. Conklin, Ed. Thomas, Evan Rogers, James T. Tilford, D. S. Carrol, John S. Terry, and W. E. Wortham, of the county of Grayson; Henry D. McHenry, Q. C. Shanks, E. D. Walker, A. B. Beard, A. Woodward, R. J. Daniel, William Baker, and Ed. Roe, of the county of Ohio; J. N. Turner, A. C. Mayes, W. C. Rice, and J. A. King, of the county of Caldwell; R. L. Cobb, Frank Machen, Clarke Shelby, W. B. Machen, F. H. Skinner, John Boyd, F. A. Wilson, and R. A. Dixon, of the county of Lyon; Sanders Evees, Henry Griffith, Thomas Landrum, A. D. Cosby, Isaac Calhoon, John Belt, J. P. Ellison, and J. A. Ruby, of the county of McLean; E. R. Weir, M. J. Roark, S. P. Love, B. Y. Davis, H. W. McNary, W. C. McNary, H. D. Rothrock, and Joshua Jones, of the county of Muhlenburg; C. Bennett, W. P. Fowler, Theodore Thompson, Thomas M. Davis, Isaac N. Handlin, David Sanders, J. M. Leech, Blount Hodge, and Samuel S. Piles, of the county of Livingston; John B. Bruner, James G. Haswell, G. W. Beard, S. V. R. Board, R. E. Cox, George Duncan, G.

P. Jolley, and H. Mercer, of the county of Breckinridge; Charles H. Green, J. B. Earl, R. O. Waddell, A. K. Bradley, John Morton, Alfred Towns, sr., John Murphy, and Charles Nall, of the county of Hopkins; Isaac Shelby, J. N. Sutcliffe, John W. Blue, James Cruise, F. M. Clements, Henry D. Coleman, I. N. Clements, David Bourland, and Gideon D. Cobb, of the county of Crittenden; J. C. Gilbert, P. Palmer, J. M. Stephens, W. B. Eley, and Campbell Parker, of the county of Marshall; J. M. Bigger, J. W. Oglevie, G. H. Morrow, G. F. Rabb, D. A. Given, L. M. Flournoy, Ben. Settle, J. V. Gould, George Myers, W. F. Norton, J. H. Terrell, L. S. Trimble, R. S. Ratcliffe, James Campbell, J. L. Dallam, and G. Langstaff, of the county of McCracken and of the city of Paducah, be, and they are hereby, appointed commissioners, under the direction of whom, or any three of whom, in each of said counties and cities subscriptions may be received to the capital stock of the Elizabethtown and Paducah Railroad Company, which is hereby incorporated; and they may cause books to be opened, at such times and places as they may direct, for the purpose of receiving subscriptions to the capital stock of said company, after having given such notice of the times and places of opening the same as they may deem proper; and if such subscription to the capital stock of said company as is necessary to its incorporation shall not have been obtained, said commissioners, or a majority of them, may cause said books to be opened, from time to time, and may adjourn to such places as they may deem expedient, until the sum necessary for its incorporation shall be subscribed: *Provided*, That any subscription tendered at any time or place other than that advertised, may be received by said commissioners or any one of them; and if accepted by them or any one of them, shall be as valid and binding against the party subscribing as if received at the time and place advertised; and if any of said commissioners shall die, resign, or refuse to act during the continuance of the duties devolved on them by this act, others may be appointed in his or their stead by the remaining commissioners or a majority of those acting as such.

[Capital stock. Body politic and corporate powers.]

§ 2. That the capital stock of said Elizabethtown and Paducah Railroad Company shall be three millions of dollars, in shares of one hundred dollars each, which may be subscribed by any individual or corporation; and as soon as three thousand shares of said stock shall be *subscribed*, the subscribers, their successors and assigns, shall be, and they are hereby, declared to be incorporated into a company, by the name of the Elizabethtown and Paducah Railroad Company; and by this name shall be capable of purchasing, holding, selling, leasing, and conveying real estate, not exceeding ten thousand acres, and personal estate so far as the same may be necessary for the purposes of the corporation and no further; and shall have perpetual succession; and by said corporate name may sue and be sued, contract and be contracted with, and may have and use a common seal, and alter or renew the same at pleasure; and shall have and enjoy all the privileges which other corporate bodies may lawfully do.

[Stock, how paid.]

§ 3. That there shall be paid at the time of subscribing for stock in said company, to the commissioner or commissioners receiving such subscription, the sum of one dollar on each share, to be paid in money or in a note or notes negotiable and payable to some one or more of said commissioners at not more than sixty days, at some bank in this State; and the residue thereof shall be paid in installments, and at such times as may be required by the board of directors of said company: *Provided*, No payment shall be demanded until at least thirty days' notice of such demand shall have been given by said board of directors by publication in some one or more papers published in Louisville and Paducah; *nor shall more than fifty per cent. be demanded in any one year;* but if the exigencies of the company should require more money than can be demanded of the stockholders as provided herein, it shall be lawful, a majority of all the directors elected concurring therein, *to borrow on the credit of said company a sum not exceeding five hun-*

dred thousand dollars; and if any subscriber shall fail to pay any installment, or part of an installment, of said subscription when demanded, according to the provisions of this section, the same may be recovered by an action in the name of said corporation against such delinquent subscriber, before any court having jurisdiction of such cases; and in all such actions it shall not be necessary to prove any other demand than the publication provided for in this section; or in case such failure to pay any installment, or part of an installment, of said subscription, demanded according to the provisions of this section, shall continue for the space of sixty days after the time the same is required by such demand to be paid, the board of directors may, in their discretion, order the same to be forfeited to the company, and may, if they think proper, sink it for the benefit of the company; but said board of directors, by a majority of the whole, may remit any such forfeiture, on such terms as they may think proper: *And provided further*, That it shall be lawful to receive subscriptions to the capital stock of said company, payable in contracts well secured, to build such parts of the road, or to perform such work, or furnish such material as may be accepted by the company.

[President and directors, how and when elected.]

§ 4. That at the expiration of the period for which the books are first opened, if two thousand shares of the capital stock shall have been subscribed, and if not, as soon thereafter as the same shall be subscribed, said commissioners, or a majority of them, shall call a meeting at such time and place as a majority of them shall designate, giving at least twenty days' notice of the time and place in one or more papers published in Louisville and Paducah; and at such meeting said commissioners shall lay the subscription books before the subscribers then present; and thereupon said subscribers, or a majority of them then present, shall have power to elect, by ballot, seven directors to manage the affairs of said company; and these seven directors, or a majority of them, shall have power to elect a president of said company, either from among the directors or any other stock-

holders, and to allow such compensation for his services as they may think proper; and in such elections, and on all other occasions when a vote of the stockholders of said company is to be taken, each stockholder shall be allowed one vote for every share of stock owned by such voter; and any stockholder may, in writing, depute any other person to act as proxy for it, him, or her; and said commissioners aforesaid, or any three of them, shall be the judges of said first election.

[Annual election, when held and how conducted. President of company. Vacancies, how filled.]

§ 5. That to continue the succession of the president and directors of said company, seven directors shall be chosen annually, on the first Saturday in June of each year, at such place as the president and directors may appoint, by the stockholders of said company: *Provided*, That the president and directors may change the time and place of holding elections upon publishing such change not less than thirty days prior to the elections in the papers aforesaid; and that the directors of said company, or a majority of them, shall have the power to appoint judges of all elections, and to elect a president of said company, either from among themselves or other stockholders, and to allow him such compensation for his services as they may deem proper; and if any vacancy shall occur by death, resignation, or refusal to act, of any president or director, before the year for which he was elected shall have expired, a person to fill such vacancy shall be appointed by the president and directors, or a majority of them; and that the president and directors of said company shall hold and exercise their offices until a new election of president and directors; and all elections which are by this act, or by the by-laws of said company, to be made at a particular time; if not made at such time, may be made in thirty days thereafter, upon notice published in the papers aforesaid.

[General meetings may be called.]

§ 6. That a general meeting of the stockholders of said company may be called any time during the inter-

val between the annual meetings by the president and directors, or a majority of them, or by the stockholders owning one-fourth of all the stock subscribed, upon giving thirty days' notice of the time and place of holding the same in the newspapers aforesaid; and when any such meeting is called by the stockholders, such notice shall specify the object of the call; and if at any such called meeting a majority in value of all the stockholders are not present in person or by proxy, the same shall be adjourned from day to day, without transacting any business, for any time not exceeding five days; and if, within said five days, stockholders having a majority in value of all the stock subscribed do not attend, in person or by proxy, such meeting shall be dissolved.

[Exhibit of affairs of company to be made.]

§ 7. That the president and directors of said company, in office for the preceding year, shall, at the regular annual meeting of the stockholders, exhibit a clear and distinct account of the affairs of said company; that at any called meeting of the stockholders, a majority in value of the holders of the stock subscribed being present, may demand and require similar statements from the president and directors, whose duty it shall be to furnish such statements when so required; and that, at all general meetings of the stockholders, a majority of them in value may remove from office the president, or any or all of the directors, and fill up the vacancies thus made in the same manner they could do at their annual meetings.

[President and directors to take oath. Treasurer to be appointed.]

§ 8. That the president and directors of said company, before he or they act as such, shall swear or affirm, as the case may be, that they will well and truly discharge the duties of their respective offices to the best of their skill and judgment; and the said president and directors, or a majority of them, or a majority in value of the stockholders in said company, at any of the stated or called meetings of said stockholders, shall have power to elect or appoint a treasurer of said company, and to

require and take of him a bond, in such penalty, and with such securities, as they may prescribe, payable to said company, conditioned for the faithful keeping and disbursing of all such money as may come to his hands, and with such other conditions as may be prescribed; upon which bond recovery may be had, for a breach of the conditions thereof, by suit, in the name of the company, in any court having jurisdiction.

[May re-open books.]

§ 9. That if any of the stock authorized by this act shall remain unsubscribed until after the election of president and directors, as provided for in the fourth section of this act, the said president and directors, or a majority of them, shall have power to open the books and receive subscriptions to the stock which shall remain unsubscribed for, or to sell and dispose of the same for the benefit of the company, not under the par value of such stock; and the subscribers or purchasers of such stock shall have all the rights of original subscribers, and be subject to the same regulations and liabilities.

[Officers to be appointed.]

§ 10. That said president and directors, or a majority of them, may appoint all such officers, agents, or servants as they may deem expedient for the business of the company, and may remove them at pleasure; that they, or a majority of them, may determine, by contract, the pay of such officers, agents, or servants, and regulate, by by-laws, the manner of adjusting all accounts against the company, and the extent of the liability of the company to its employees; that they shall have power to erect warehouses, work-shops, and other buildings or edifices necessary or convenient for the use of said company; that they shall have power to direct and regulate in what manner, and by what evidence, stock in said company may be transferred; and to pass all by-laws they may deem necessary or proper for exercising the powers hereby vested in said company, and for carrying into effect this act, and to alter the same at pleasure: *Provided*, The same shall not be contrary to the Constitution and laws of the United States or of this State.

[Capital stock may be increased.]

§ 11. That if the capital stock of said company shall be deemed insufficient for the purposes of this act, it shall be lawful for the president and directors to increase the same as much as they may deem necessary, not exceeding the sum of five million dollars, giving notice as hereinbefore required.

[Further powers of corporation.]

§ 12. That the president and directors of said company are hereby vested with all powers and rights necessary to the construction of a railroad from Elizabethtown to Paducah, along such route as may be selected by the president and directors; and that they may cause to be made contracts with others for making said road or any part of it; and that they, their agents, engineers, etc., or those with whom they may contract for surveying or making the same, or any part thereof, may enter upon, use, and excavate any land which may be wanted for the site of said road, or the erection of warehouses, or other structures or works, necessary and convenient to said road, or for its use, or for any other purpose necessary or useful in the construction or repair of said road, or its works and appurtenances; and they may build bridges and construct tunnels, provided such bridges shall not obstruct navigation or any navigable stream; and may fix scales and weights, take and use timber, earth, gravel, stone, and other material necessary or useful in the construction and repair of said road.

[May agree with owners for use of lands, timber, etc. Proceedings in case can not agree.]

§ 13. That the president and directors, or a majority of them, or their authorized agents, may agree with the owners of any land, earth, stone, timber, or other materials, or improvements which may be wanted for the construction or repair of said road or any of their works, for the purchase or the use and occupation of the same; and if they can not agree, and the owner or owners of any

of them be a *feme covert*, under age, *non compos mentis*, or out of the county in which the property wanted may lie, application may be made to any justice of the peace of said county, who shall thereupon issue his warrant, directed to the sheriff or any constable of said county, requiring him to summon twenty discreet men not related to the owners, nor in any way interested, to meet on the land or near the property or materials to be valued, on a day named in said warrant, not less than ten nor more than twenty days after the issuing of the same; and if, at the time and place, any of said jurors do not attend, said sheriff or constable shall forthwith summon as many jurors as may be necessary with the jurors in attendance; and from them each party, or if not by agent or otherwise, the sheriff or constable for the party absent, may strike off four jurors, and the remaining twelve shall act as the jury of inquest of damages; before the jury acts, the sheriff or constable shall administer to them an oath or affirmation that they will justly and impartially fix the damage which the owner or owners will sustain by the use and occupation of said property required by said company; and the jury, in estimating the damages, shall find for the owner or owners the actual value of the land or other thing proposed to be taken; but, in estimating damages resulting incidentally to the other land or other property of such owners, shall offset the advantages to such residue to be derived from the building and operating of said road by, through, or near such residue; the jury shall reduce their verdict to writing and sign the same, and it shall be returned by the sheriff or constable to the clerk of the county court of his county, and such clerk shall receive and file it in his office, and such verdict shall be confirmed by the county court at its next regular term, if no sufficient reason is shown by either party for setting it aside; and when so confirmed, it shall be recorded by the clerk at the expense of said company; but if set aside, the court shall direct another inquisition to be held by the sheriff of the county in the manner above prescribed; and every inquisition shall describe the property taken, or the bounds of the land

condemned, and the duration of interest in the same, valued for the company; and such valuation, when tendered or paid to the owner or owners of said property, or to the sheriff of the county in which said inquest is held, when such owner or owners do not reside in such county, shall entitle said company to the [land] or interest in the same thus valued, as fully as if it had been conveyed to it by the owner or owners of the same; and the valuation of the same, if not received when tendered, may, at any time thereafter, within one year, be received from the company, without costs or interest by the owner or owners, his, their, or its legal representatives: *Provided*, That land condemned for road-way shall not be more than sixty-feet, unless said company shall file with the justice, at the time of applying for a warrant, the affidavit of some one of its engineers, stating that a greater width is necessary, and how much more is required, when the inquisition shall be for the quantity thus stated.

[May use land, etc., after having it valued.]

§ 14. That whenever it shall be necessary for said company to have, use, or occupy any lands, material, or other property in order to the construction or repairing of said road, or their necessary works or buildings, the president and directors, or their agents, or those contracting with them for constructing or repairing the same, may immediately take and use the same, they having first caused the property wanted to be viewed by a jury formed as hereinbefore prescribed; and it shall not be necessary, after such view, in order to the use and occupation of the same, to wait the issue of the proceedings upon such inquest; and the inquest of the jury, after the payment or tender of such valuation, shall be a bar to all actions for taking and using such property, whether begun before or after such confirmation or payment of said valuation.

§ 15. This act shall take effect from and after its passage.

Approved March 5, 1867.

B.

Chapter 1890.

An act to amend an act incorporating the Elizabethtown and Paducah Railroad Company.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SEC. 1. That an act incorporating the Elizabethtown and Paducah Railroad Company be, and the same is hereby, so amended as to authorize any county, through which said proposed road shall pass, to subscribe stock in the said railroad company, in any amount any county may desire; and the said county court of any such county is authorized to issue the bonds of their respective counties, in such amounts as the county court may direct, payable to bearer at any time not exceeding thirty years from date, and bearing any rate of interest not exceeding eight per cent. per annum, payable semi-annually, in the city of New York, and to deliver all such bonds to said railroad company in payment at par, for stock in said railroad company. But before any such subscription on the part of any county shall be valid and binding on the county, the county court of such county shall submit the question of any such subscription to the qualified voters of any county in which the proposed subscription is made, at such time or times as the county courts of said counties may, by order, direct; and should a majority of the qualified voters, voting at any such election, vote in favor of subscribing stock in said railroad company, or should a majority of the qualified voters of any county through which said railroad may pass petition the county court of their respective counties to subscribe stock in said railroad, designating in said petition the amount to be subscribed, then, in either event, it is hereby made the duty of the county court of any county, in which such vote or petition shall be presented, to make the subscription in the name of their respectiye counties, and proceed to have issued the bonds to the amount of such subscription as herein directed; and the county courts of the counties that may subscribe for stock in said railroad

are hereby authorized to levy a tax upon the tax-payers of their respective counties, taxable under the revenue laws of this State, a sum sufficient to pay the interest on said bonds, and the costs of collecting the same, as the same matures; and at the maturity of said bonds, a tax in like manner that will pay the principal of said bonds; and the tax-payers of any of said counties paying tax to said railroad, under the provisions of this act, shall be entitled to stock in said railroad to the amount of the taxes they may pay toward the payment of the principal or interest of any of said bonds, which shall be issued to them by said railroad upon the presentation of their receipts, and the county courts of said counties shall have power to enforce the collection of said railroad tax as other taxes, and appoint collectors, or require the sheriffs to collect the tax, and take such bonds from them as they may prescribe.

SEC. 2. This act shall take effect from and after its passage. Approved March 9, 1867.

2 Laws of Kentucky, 1867, p. 425–26.

C.

Chapter 548.

An act to amend the charter of the Elizabethtown and Paducah Railroad Company.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

[Former act repealed.]

"SECTION 1. That an act entitled 'An act to amend an act incorporating the Elizabethtown and Paducah Railroad Company,' approved March 9th, 1867, be, and the same is hereby, repealed.

"2. That whenever the said Elizabethtown and Paducah Railroad Company shall request the COUNTY COURT of any county through or adjacent to which it is proposed to construct said road to subscribe, *either absolutely* or *upon specified conditions*, a specified amount to

the capital stock of said company, the COUNTY COURT so requested shall forthwith order an election to be held at the several voting places in said county on a day to be fixed by the court, not later than thirty (30) days after the making of such order, and shall appoint judges and other officers necessary to hold said election.

"3. That it shall be the duty of the sheriff of such county to give notice to the officers appointed to hold said election in the same manner as is now provided by law in regard to other elections; and in case any of the officers appointed shall fail to attend or refuse to act, others may be appointed in the same manner as at general elections.

"4. That the person acting as sheriff at the several precincts shall return to the clerk of the county court within three (3) days after the day of such election the poll-books of their respective precincts, and on the next day thereafter the county judge and county clerk shall count the vote; and if it shall appear that the majority of those voting voted in favor of the subscription of stock as proposed, the county judge shall order the vote to be entered on the record, and the subscriptions to be made by the clerk on behalf of the county on the terms specified in the order submitting the question to a vote.

"5. That whenever the said railroad company shall request the COUNTY COURT of any county to do so, it shall be the duty of such court forthwith to submit to the qualified voters of any designated precinct or precincts in said county the question whether the court shall subscribe to the capital stock of said Elizabethtown and Paducah Railroad Company, on behalf of said designated precinct or precincts, the amount of stock specified in the request of said company, either absolutely or on such conditions as may be proposed by said company. Said election shall be held on a day to be fixed by the court (not less than thirty nor more than sixty days) after the order is made, and shall be conducted by officers to be appointed by the court; and the poll-books shall be returned and the vote shall be counted and entered on the record of the county court in the same manner as prescribed in section 4 of this act; and if a majority of all those voting in such designated

precinct, or a majority of the aggregate votes cast in such designated precinct or precincts shall be in favor of making such subscription, the court shall order the clerk forthwith to make the subscription on behalf of the precinct or precincts to which the question was submitted, and in accordance with the terms upon which it was submitted.

"6. That whenever the city council of any city or the board of trustees of any town, in, to, or near to which it is proposed to construct said Elizabethtown and Paducah Railroad, or the general council of city of Louisville, shall be requested to do so, it shall be the duty of such city council or town trustees to submit to a vote of the qualified voters of such city or town, on a day to be designated by such council or trustees, not later than thirty (30) days after the application is made to them by said company, the question of subscribing for and on behalf of such city or town the amount of stock proposed by said company, on the terms proposed; and if a majority of those voting shall vote in favor of making such subscription, it shall be the duty of such city council or board of trustees to enter the vote on its records; and the mayor of such city, or president of the board of trustees of such town, shall make the subscription in accordance with the vote.

"7. That if any county, city, or town shall subscribe to the capital stock of said Elizabethtown and Paducah Railroad Company, under the provisions of this act, it shall be the duty of the COUNTY COURT of such county, the mayor, and council of such city, and the board of trustees of such town, to issue the bonds of such county, city, or town, in denominations of not less than one hundred nor more than one thousand dollars, in payment thereof, with coupons attached, under the seal of such county, city, or town, the bonds of the counties to be signed by the county judge and countersigned by the clerk, and the coupons to be signed by the clerk alone. The bonds of cities subscribing shall be signed by the mayor and countersigned by the city clerk or auditor, and the coupons shall be signed by the clerk or auditor alone. The bonds of towns subscribing shall

be signed by the president of the board of trustees, and countersigned by the town clerk; and the coupons shall be signed by the clerk alone. Such bonds shall be negotiable and payable to bearer in the city of New York (at not more than thirty (30) years from their date), and shall bear interest at a rate not greater than eight (8) per cent., payable semi-annually in the city of New York.

"8. That if any election district or districts in any county shall subscribe to the stock of said company under the provisions of this act, it shall be the duty of the COUNTY COURT of such county to issue the bonds of such district or districts in payment thereof, in every respect as if such subscription had been made by the county, except that the bonds shall show on their face the district or districts for which they are issued, and such districts shall be alone bound to pay said bonds and their interest.

"9. That in case any county, city, town, or election district shall subscribe to the capital stock of said Elizabethtown and Paducah Railroad Company, under the provisions of this act, and issue bonds for the payment of such subscription, it shall be the duty of the COUNTY COURT of such county, the city council of such city, and the trustees of such town, to cause to be levied and collected a tax sufficient to pay the semi-annual interest on the bonds issued and the cost of collecting such tax, and paying the interest on all the real estate and personal property in said county, city, or town, subject to taxation under the revenue laws of the State, including the amounts owned by residents of such county, city, or town, or election districts, which ought to be given in under the equalization laws.

"10. That on levying a tax, as provided for in this act, to pay the interest on bonds issued by the COUNTY COURT of any county, whether for the whole or only a part thereof, or of any city or town, it shall be the duty of the COUNTY COURT, city council, or town trustees making such levy, to appoint three (3) resident tax-payers of such county, or part of a county, city or town, who shall be styled the board of commissioners of the sinking fund of such county, part of a county, city or town. The commissioners so appointed shall, before they pro-

ceed to discharge their duties, be sworn in the presence of the court, council, or trustees appointing them, faithfully to discharge their duties according to the best of their skill and judgment; they shall hold their office at the pleasure of the court, council, or trustees by whom they are appointed. They shall immediately appoint one of their number treasurer, who shall execute bond payable to the commonwealth, with such security as shall be approved by the court, council, or trustees appointing the commissioners, conditioned for the faithful keeping and disbursing of all money coming to his hands as treasurer of such board, on which bond suit may be brought from time to time, by and in the name of such county, or part of a county, city or town, or by any other person injured by any breach of his bond, in any court having jurisdiction of the sum claimed in such suit. Such treasurer may be required at any time to give a new bond, and any surety in such bond shall be entitled to the same remedies for procuring additional and counter security as are now given to the sureties of guardians, administrators, etc. Said treasurer shall be allowed for his services such compensation, not exceeding one (1) per cent. on the money received and paid out by him, as may be allowed by the court, council, or trustees appointing such commissioners respectively. In case a vacancy shall occur in said board of commissioners, such vacancy shall be filled by the court, council, or trustees by whom such board was appointed.

[Who to collect tax.]

"11. That taxes levied under the authority of this act, in any county or part of a county, shall be collected by the sheriff of such county, and taxes levied in any city or town shall be collected by the officer of such city or town who is, by law, the collector of taxes levied for the ordinary purposes of such city or town; but before any sheriff or other officer shall be authorized to collect any such tax, he shall execute bond, if a sheriff, with such sureties as may be approved by the county court, and if a city or town officer, with such surety as may be approved by the council or trustees of such city or town, conditioned that such officer will promptly and

faithfully collect and pay over to the proper person, within the time prescribed by law, all taxes levied under this act, which may be placed in his hands for collection.

[Power of collection officers.]

"12. That sheriffs and other officers, having in their hands for collection taxes levied under this act, shall have all the powers of distraining and selling personal property which sheriffs have in the collection of the State revenue; and when such officer shall be unable to find personal property liable to sale for the unpaid tax of any individual, he may levy the same on any real estate of such person situated in the county, and sell the same under the regulations prescribed by law for selling real estate under execution; and all taxes levied under this act shall be a lien on the real estate of the person taxed, which shall lie in the county in which such tax is levied; but the owner of any real estate sold, may redeem the same at any time within (5) five years after such sale, by paying the purchase money, and (10) ten per cent. per annum thereon, with all taxes of every description paid by the purchaser after his purchase and ten (10) per cent. per annum thereon.

[Certificate of purchase.]

"13. That sheriffs or other officers selling real estate for taxes levied under this act shall give to the purchaser a certificate of his purchase, which shall describe the real estate sold, and state the amount for which it was sold, and the date of the sale; which certificate shall be lodged by the purchaser with the clerk of the county court within sixty days, who shall record the same in a book to be kept for the purpose, and for which such clerk shall be entitled to charge a fee of fifty (50) cents; and if such certificate is not recorded as herein provided, the land may be redeemed at any time within fifteen (15) years, on paying the purchase money and six (6) per cent. per annum thereon, and other taxes paid by the purchaser, and six (6) per cent. per annum thereon,

[Compensation.]

"14. That sheriffs and other officers collecting taxes levied under this act shall receive the same compensation as is allowed by law for the time being for collecting the State revenue.

[When tax to be collected.]

"15. That one-half of the taxes levied in any one year shall be collected by sheriff or other officer in whose hands the same is placed for collection, and paid over to the treasurer of the board of commissioners of the sinking fund within one hundred and twenty (120) days after the same is placed in his hands, and the residue within six (6) months after the first ought to have been paid; and if any sheriff or other officer, whose duty it is to collect taxes levied under this act, shall fail or refuse to execute bond as required by this act, for thirty (30) days after the tax is levied, he shall forfeit his office, and the court, city council, or board of trustees levying such tax, may appoint a collector, who shall execute bond with sureties, and have all the powers and be subject to all the duties and liabilities of sheriffs and other officers in collecting taxes under this act.

[Penalty for failure to collect in time prescribed.]

"16. That if any sheriff or collector, or other officer, having in his hands for collection taxes levied under this act, shall fail to collect and pay over the same within the time prescribed, such sheriff, collector, or other officer shall, with his sureties, be liable for the amount not paid as required, and ten (10) per cent. thereon, to be recovered on motion on ten (10) days' notice, in any court having jurisdiction; and any execution issued on such judgment shall not be replevied and shall be indorsed, by the clerk issuing the same, that no security of any kind is to be taken.

"17. It shall be the duty of the commissioner of the sinking fund to see that the sheriff or other officer collects and pays over taxes placed in their hands, according to law, and to institute legal proceedings against them on the failure to do so. They shall appropriate such moneys,

when collected, to the payment of the interest on the bonds of their county, city, or town. They shall, whenever a dividend is declared by said Elizabethtown and Paducah Railroad Company, cause their treasurer to receive the same and pay the interest on their bonds out of it; and when a surplus shall remain after paying the interest due, they shall apply such surplus to the purchase of their bonds, if they can be purchased at par; and if they can not be purchased at par, they shall invest such surplus in some safe and profitable manner, and in such way that the money may be readily realized when needed to buy or pay off bonds.

"18. That all dividends which shall be received upon the stock held and owned by any county, part of a county, city, or town, under this act, shall be, and are hereby, set apart to be held sacred as a sinking fund to be only used, as provided in this act, for the payment of the principal and interest of the bonds issued under the authority of this act.

"19. That in case the dividends upon the stock held and owned under this act by any county, part of a county, city, or town, and for which bonds shall have been issued, shall not be sufficient to enable such county, city, or town to pay its bonds at maturity, it shall be the duty of the commissioners of the sinking fund to report such fact to the COUNTY COURT, city council, or town trustees, at least five (5) years before the maturity of said bonds; and if any county court, city council, or the trustees of any town owing such bonds shall deem it proper to do so, they may issue new bonds, having not more than twenty (20) years to run, and payable at such place as may be designated on the face of such bonds, bearing the same interest and secured in all respects as the bonds first issued are secured, and sell such bonds or exchange them for the old ones; provided, however, that if any court, city council, or town trustees shall deem it expedient to issue and sell such new bonds, or shall be unable to raise money necessary to pay off its bonds at maturity by a sale of new bonds, it shall be the duty of such county court, city council, or town trustees to cause a tax to be levied and collected on all the property in such county, city, or town which,

by the provisions of this act, is subject to taxation, to pay interest sufficient, when added to any sum raised by sale of new bonds, to discharge the old bonds at maturity; provided, also, that any tax levied under the provisions of this section shall be collected by the same officers, under the same powers, and subject to the same responsibilities in every respect as provided in the act in relation to the collection of taxes levied to pay interest.

"20. That in case a direct tax shall be levied to pay all or any part of the bonds of any county, part of a county, city, or town, issued under this act, at or before maturity, it shall be the duty of the commissioners of the sinking fund to cause to be transferred to the taxpayers, or their assignees, stock held by said county, city, or town, to the amount of the tax paid, upon the delivery to said commissioners of tax receipts, by the holders thereof; such receipts shall be negotiable by indorsement, and no stock shall be transferred for a less amount than one hundred dollars ($100).

"21. That it shall be the duty of the treasurers of the several boards of commissioners of the sinking fund appointed under this act, upon the surrender to them at their respective offices of receipts given for taxes paid to defray the interest on the bonds of their respective counties, cities, and towns, prior to the time of declaring the first cash dividend by said railroad company, to the amount of one hundred dollars or more, to issue to the holders thereof certificates setting forth the number of shares of stock to which the holder is entitled, and to give a separate receipt for any fractional part of a share, which receipt shall be negotiable by indorsement, and may be added to other like receipts or tax receipts to make up a full share. The treasurer shall write or stamp the word 'canceled' across the face of each tax receipt taken up by him, and file it away in his office; and he may charge and collect one dollar per share for each certificate issued by him. He shall keep a list of the names of those to whom he issues certificates, with the number of the certificate, and the number of shares for which each was given; and shall, on the last day of each month, make out and

forward to the secretary of the company a copy of the list of certificates issued during that month.

[To keep record of proceedings.]

"22. That it shall be the duty of the said Elizabethtown and Paducah Railroad Company, after the first cash dividend shall be declared, on presentation at his office of the stock certificates issued under the provisions of the last preceding section, to issue stock therefor to those to whom such certificates were issued, or their representatives or assigns.

"23. That the commissioners of the sinking fund shall keep an exact record of all their actings and doings as such, and their treasurer shall keep a strict account of all moneys received or paid by him; and shall settle his accounts annually, or oftener if required, which settlement shall state fully his accounts since his last settlement.

[Real estate may be taxed.]

"24. That all the real estate lying in any county, election district, city, or town, issuing bonds under this act, shall be taxed for the purpose of defraying the interest on such bonds, and for the payment of the principal, if that shall be paid by taxation; and when a part only of the land of any tax-payer shall lie in such county, district, city, or town, the assessor of tax shall designate on his books what part lies within such county, district, city, or town, and its value, and only such part shall be assessed for the purpose of this act.

[Commissioners to cast vote in meeting of stockholders.]

"25. That the commissioners of the sinking fund, or one of them, shall cast the vote to which their respective counties, districts, cities, and towns may be entitled, in any meeting of the stockholders of said Elizabethtown and Paducah Railroad Company; *provided*, that if neither of them shall attend, then any person duly authorized by any two of said commissioners may cast the vote as proxy for said commissioners.

[Capital stock may be increased.]

"26. That the president and directors of said Eliza-

bethtown and Paducah Railroad Company may, if it shall seem advisable to them, increase the capital stock of said company to a sum equal to the total cost of the road and its equipments, depots, water-stations, etc.

[May acquire right of way.]

"27. That said company may acquire a right of way sixty-six feet wide, instead of sixty feet as provided in the charter; but this shall not be construed as a limitation on the right conferred by the original charter to acquire any width that may be shown to be necessary by the affidavit of an engineer, filed with the justice at the time of suing out a warrant for condemning such land.

[Road exempt from taxation until completed.]

"28. That said Elizabethtown and Paducah Railroad Company shall be exempt from taxation until completed, and that it shall never be taxed at a valuation beyond the rate of which said roads are now taxed, nor exceeding its actual value.

[May purchase other roads.]

"29. That the president and directors of said company may, with the assent of the holders of a majority in value of the stock of the said company, purchase and hold any other railroad in this or any other State, and may subscribe stock in, or aid in the building of, any other road, in or out of this State; whenever, in their judgment, it may be to the interest of the Elizabethtown and Paducah Railroad Company to do so, they may sell the said Elizabethtown and Paducah Railroad, or lease the same, and may build branches from the said road, and branches from such branches.

[Receive donations.]

SEC. 30. That said Elizabethtown and Paducah Railroad Company may receive donations of land to be used for any of the purposes of said road, or to be sold to raise money to build the same; and may receive subscriptions to be paid in land, at a valuation to be fixed by such means as may be agreed upon between said

company or its authorized agents and subscriber, and may lease and sell and convey any land so given or subscribed.

[May consolidate with other roads.]

SEC. 31. That said Elizabethtown and Paducah Railroad Company may, the holders of a majority in value of all the stock therein concurring, agree on terms for consolidating said company with any other railroad company, on such terms as may be agreed upon; but no such consolidation shall in any wise affect the holders of a mortgage bond issued by the said Elizabethtown and Paducah Railroad Company.

[Bonds of company may be issued.]

SEC. 32. That the Elizabethtown and Paducah Railroad Company may issue and sell the bonds of said company of the denomination of one thousand dollars, to be signed by the president and countersigned by the secretary, with the seal of the corporation affixed, to an amount not exceeding eight millions of dollars, bearing not exceeding eight per cent interest, payable semi-annually, with coupons attached, signed by the secretary of the company, to be made payable, as said company may direct, within thirty years from their date.

[Mortgage road to secure same.]

SEC. 33. To secure the prompt payment of the interest and principal of bonds issued by authority of this act, said company may execute a mortgage or deed of trust, conveying said railroad and its property and franchises to a trustee or trustees, and from time to time fill vacancies that may occur for the use, and to secure the holders of such bonds, with such covenants and stipulations as may be necessary to effect the purpose and object of its execution.

[Proceedings for foreclosure of same.]

SEC. 34. That if the mortgage or deed of trust authorized by the last preceding section shall be foreclosed by legal proceedings, such foreclosure shall be for the benefit of all the holders of bonds secured by its pro-

visions. Upon such foreclosure, the president shall make a correct list of all bonds secured by such mortgage or deed of trust which have been sold, and verify it by his affidavit, which affidavit and list shall be filed in the Harden circuit court, where only such proceeding is authorized to be had. Such foreclosure shall not take place until ninety days after publication of notice of the commencement of proceedings to that end shall have been made in one or more newspapers published in the cities of New York and Louisville. The person or corporation becoming the purchaser or lessee of said road, by reason of any sale or leasing to satisfy the demands of bondholders, shall be vested with all the rights, privileges, franchises, and immunities of corporations.

[Company may establish sinking fund.]

"35. That to create and secure a fund of final redemption of mortgage bonds issued under authority of this act, a sinking fund shall be created by said company; and in order to create such a sinking fund said company shall, at the time of declaring the first cash dividend, ascertain what sum ought to be set aside annually, in order to create a fund sufficient to redeem its bonds at maturity, and then set apart and pass into the sinking fund that sum; and thereafter, annually, there shall be set aside and pass into said fund a like sum, until a fund is created sufficient to pay the outstanding bonds of the company, which fund shall be held sacred for the redemption of said bonds, and shall be used for no other purpose. That the company may loan and reloan the sum thus set apart, at any rate of interest not greater than that paid on its bonds, or may invest the same in any safe and profitable manner deemed advisable, which is not inconsistent with the purposes and objects of creating said fund: *Provided*, That said company may use any or all of said fund in retiring its bonds before maturity, if deemed advisable, but no bond purchased with the proceeds of the sinking fund shall be retired, but the same shall be cancelled,

[Bondholders to receive evidences of stock.]

"36. The holders of mortgage bonds issued under authority of this act may demand, and on such demand shall be entitled to receive, evidences of stock in said Elizabethtown and Paducah Railroad Company, in lieu of their bonds, at dollar for dollar, at any time within seven years after there is a through run of cars from Elizabethtown to Paducah.

[Bond not to be avoided on account of rate of interest.]

"37. The bonds of the company, nor the bond of counties, parts of counties, cities, or towns, issued under authority of this act, whether sold and delivered in this State or elsewhere, shall not be avoided in whole or in part by reason of the rate of interest agreed to be paid, or of the place at which they may be sold or delivered, nor by reason of their having been sold at less than their par value.

[How stones, gravel, etc., may be obtained.]

"38. That upon application by said company to the county court of any county into or through which it is proposed to construct said Elizabethtown and Paducah Railroad, such court shall appoint three commissioners, two of whom shall be residents of said county and one an engineer of said company, who shall be sworn faithfully to discharge their duties under this act, to the best of their skill and judgment; and whenever said company shall be unable to agree with the owner of any land, earth, stone, gravel, timber, or other material or thing required for the site or construction of said road, or whenever the land or material required shall be owned by any person not a resident of said county, or who is a *feme covert*, infant, or *non compos mentis*, it shall be the duty of the said commissioners to view the land or material required, and fix the amount of compensation to which the owner or owners of such land or material shall be entitled, and to make out and return to the office of the clerk of the county court a report, in writing, particularly describing the land or other material valued, and the interest and duration of

the interest value, and the amount of damages assessed. The report of the commissioners shall give the name of the owner, and state whether such owner is a resident of the county, and whether a *feme covert*, infant, or non-sane person. The clerk shall receive such report and file the same, indorsing thereon the time of its being filed; and if the owner resides in the county, he shall forthwith issue a summons commanding the owner or owners of such land to appear and show cause why the report should not be confirmed, which summons shall be forthwith executed by the sheriff or other officer in whose hands it may be placed. The report shall be docketed in the county court, and stand for trial at any term of said court commencing not less than ten (10) days after service of the summons. If the owner is not the resident of the county, the court shall, at the first term after the report is filed, appoint an attorney to defend for such owner, who may file exceptions at any time not later than the next term; and upon exceptions being filed by the owner, or by an attorney appointed to defend for him, or by the company, the court shall forthwith order a jury to be empaneled to try the question of damages, unless, for good cause shown, time is given for preparation. If no exceptions are filed, the report shall be confirmed. The jury and commissioners shall, in estimating the damages to any proprietor of land or material sought to be condemned for said road, be governed by the same rule as prescribed in section thirteen of the act to which this is an amendment, and the mode of valuation provided for herein shall have the same effect, and confer upon the company all the rights and privileges which would be conferred if the proceeding had not been in accordance with the provisions of the original charter; and whenever a verdict shall be had, the court may give judgment condemning such land or other material for the use of the said company, and against the company for the amount of damages assessed, and also to the owner for his cost, if the verdict shall be for more than was assessed by the commissioners.

SEC. 39. That said Elizabethtown and Paducah Railroad Company may, if it shall deem it proper to do so, extend its road from Elizabethtown to the city of Louisville.

SEC. 40. This act shall take effect from and after its passage.

Approved February 24, 1868.

1 Laws of Kentucky, 1867–'68, p. 622, ch. 548.

D.

Chapter 519.

An act to authorize and empower the County of Muhlenburg to compromise and fund its outstanding bonded indebtedness, issue bonds, and levy and collect taxes to pay the same.

SECTION 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That the county of Muhlenburg is hereby authorized and empowered to compromise and fund its present outstanding bonded indebtedness, and to redeem and cancel all bonds and unpaid coupons evidencing the same, whether due or to become due, and whether merged into judgment or not, by the issue, negotiation, and delivery to the holder or holders of its said bonds and coupons or judgments who agree to receive the same, of the bonds of said county, of the denominations of fifty dollars, one hundred dollars, and five hundred dollars, to bear date July first, one thousand eight hundred and seventy-eight, and to mature twenty years thereafter, and to bear interest from date, payable semi-annually, at a rate not to exceed six per cent. per annum. The semi-annual installments of interest to be represented by coupons attached to the bonds. The bonds and coupons to be payable to bearer at any incorporated bank in the city of New York. The said bonds shall be signed by the county judge of said county and attested by the clerk of the county court of said county, with the seal of said county affixed, and the coupons signed by the clerk of said county only. At any time after five years from the date of said bonds the said county shall have the right to pay, call in, and redeem any or all of them.

SECTION 2. The powers of the said county to com-

promise and fund its said indebtedness, and to redeem and cancel the said evidences of the same, shall be vested in a board, to consist of as many members as there are or may be justice's districts in said county, and of the county judge of said county, and to be styled and known as the Funding Board of Muhlenburg County. The qualified voters in each of said districts shall elect one member of said board. The first election shall be held at the voting place in each district on the first Saturday in May, one thousand eight hundred and seventy-eight. Thereafter the elections shall be held on the day fixed by law for the election of constables. Members of the board elected at the first election shall hold office one year and until their successors are elected and qualified. Members elected at subsequent elections shall hold office two years, and until their successors are elected and qualified. No person shall be elected or appointed a member of said board unless he be a citizen of the United States, at least twenty-four years of age, nor unless he has resided within said county two years next preceding his election or appointment. Any vacancy occurring in said membership shall be filled by appointment by the county court. If said districts or any or either of them fail to elect, the county court shall appoint the member or members necessary to fill the board. In March, one thousand eight hundred and seventy-eight, the county court shall appoint two discreet voters in each district as judges, and a clerk, who, with the sheriff or one of his deputies, shall hold the first election. The sheriff shall, at least five days before the election, give each judge and clerk written notice of his appointment. Each of said clerks shall be furnished with a poll-book by the county clerk. In other respects said election, and in all respects subsequent elections of members of said board, shall be conducted, returned, and certified, as in the election of constables.

SECTION 3. The county judge of said county shall, by virtue of his office, be a member as well as the president of said board. He shall preside at all meetings of the board, decide points of order, enforce decorum, and punish for contempts. He may call and convene special

sessions of the board. If the county judge is absent or cannot preside, the board shall elect another of their members as president *pro tem.*

SECTION 4. The board shall meet the first and third Tuesdays in each month, and oftener if their business require it, and shall meet upon their own adjournments and determine their own rules of procedure. They shall designate by ordinance the time and place of their regular meetings. A majority of the members of the board shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members. Upon any question voted upon by the board any member shall have the right to call for the yeas and nays and have the same recorded.

SECTION 5. The board shall keep, or cause to be kept, a correct journal of their proceedings. They shall have power to contract with any holder or holders of any of the evidences of indebtedness hereinbefore mentioned, for the surrender and cancellation of same, whether due or to become due, and to cause to be issued and delivered in lieu thereof, or by order entered of record upon the book, wherein all their proceedings shall be faithfully and correctly recorded, the bonds of the county authorized to be issued under this act, or to purchase the same at such cost price as may be agreed on. They shall also keep another book, which shall at all times show the number and denomination of each and every bond issued and delivered by their order to any creditor of the county, together with a statement of the number of the interest coupons, if any, detached therefrom before or at delivery. They shall also keep another book, which shall at all times show the number and denomination of each and every bond and coupon redeemed and canceled under this act, with a full description thereof; and said bonds and coupons and all coupons detached from bonds issued under this act, shall be burned by the board in the public square in Greenville. Said books shall at all times be open for public inspection.

SECTION 6. In January in each year the board shall cause a certified copy of the record of their proceedings during the preceding year, a like copy of their record

of the bonds issued and delived by their order, and a like copy of their record of the bonds redeemed and canceled, to be filed in the county court of said county, and the court shall have the same entered of record by the clerk thereof in suitable books to be kept in his office as public records.

SECTION 7. That to pay the accruing interest on the bonds issued under authority of this act, and to provide a sinking fund for their redemption after five years or at maturity, an annual tax shall be levied by the county court of said county upon all the real and personal estate in said county, including all amounts given in under equalization law subject to taxation under the general laws of this Commonwealth. Said county shall have a lien on all property taxable or taxed under this act, and on other property of each tax-payer for the payment of all taxes payable by such tax-payer, which shall not be defeated by gift, devise, sale, alienation, or any means whatever.

SECTION 8 The sheriff of said county, by virtue of his office, shall be the collector of said taxes. He shall, at the term of court, when said taxes are levied or imposed, or at any subsequent term of the court, before he proceeds to collect the same, execute a separate bond, payable to the Commonwealth of Kentucky, with one or more good and sufficient sureties, to be approved by said court, whose aggregate estate subject to execution, after payment of all their debts and liabilities, shall be equal to double the amount of the whole of the taxes to be collected by him, in form substantially as follows:

We, A.... B...., sheriff of Muhlenburg County, and C.... D.... and E.... F...., his sureties, jointly and severally bind and oblige ourselves to the Commonwealth of Kentucky that the said A.... B.... shall well and truly collect, account for, and pay over to the person entitled to receive the same according to law, the county taxes of said county for the year .... levied and imposed under authority of an act to authorize and empower said county to compromise and fund its outstanding bonded indebtedness; that he shall truly report, as required by law, all taxes collected or received by him or his deputies, and pay over the same according to

law, and in all things well and truly demean himself, and perform the duties of collector of said taxes of said county.

SECTION 9. In case the sheriff shall fail for any reason to give said bond or to renew his bond, or to give additional security when required so to do by said court, the said court shall appoint a special collector of said taxes, who shall, before entering on the discharge of his duties, take an oath faithfully to perform them, and execute such bond, with such surety, in said court, as is required in the last preceding section. The collector may, with the consent of the county court, appoint one or more deputies. He and his sureties shall be liable for their acts as such, and their liabilities to him shall be the same as that of deputy sheriffs to their principal. The said county shall have a lien, from the date of the bond required herein, upon the real estate of the sheriff or collector, then owned or afterward acquired by him, which shall not be discharged until a quietus is obtained for all the taxes he is bound for under this act.

SECTION 10. The sheriff or collector, from and after the first day of June in each year, shall collect the taxes levied or imposed under authority of this act, in the same mode, with the same powers, duties, and responsibilities, and for the same commissions given and allowed the collectors of the public revenue, and report under oath every month to the county court the full amount collected or received by him, and pay the same, less the commissions, over immediately, and shall account for and pay all taxes for which he is bound into the county treasury by the first day of April in each year. The county court shall, in the month of October in each year, and oftener if it be advisable, cause a settlement of the sheriff's or collector's accounts concerning the taxes under this act, to be made and reported to court, and in the month of April thereafter shall cause a final settlement to be made and reported to court. Said court shall, if necessary, hold special sessions in said month, to cause said settlements to be made. Any person or persons failing to pay their taxes levied or imposed under this act by the first day of April in the year following the assessment or levy, shall pay ten per

cent. additional on the tax so due and unpaid. Any sheriff or collector who shall fail to report as herein required, shall be liable to indictment in the Muhlenburg circuit court, and fined not less than one hundred dollars nor more than five hundred dollars for each offense, the fine, less costs and fees, to be collected and paid into the county treasury for the purposes of this act. The county court, in the final settlement with the sheriff or collector, shall charge him with the ten per cent. accruing under the provisions of this section. Any sheriff or collector who shall fail to collect or pay over the taxes as provided herein shall, with his sureties on his bond, be liable by motion on notice served not less than ten days, or by action in the name of said county in the circuit or common pleas court of said county, in which motion or action the said county shall recover of such sheriff or collector and his sureties the amount due the county, with interest from the time it should have been paid, the costs of the motion or action, and ten per cent. damages on the amount found due and recoverable. Judgments in the name of said county against any sheriff or collector, their sureties, or the heirs, devisees, and personal representatives of any of them, shall bind the estate, legal and equitable, of all defendants to said judgments from the commencement of the motion or action till satisfied. No execution thereon shall be stayed by replevin or sale on credit, but in all such cases the estate taken shall be sold for money. Officers and their deputies failing to levy executions in the name of the county or withholding any such execution, and not making return thereof for one month after the return day, or failing to pay the money when collected, shall, together with their sureties, be liable by like motion or action for the amount of said execution and twenty per cent. damages thereon. The county attorney of said county shall prepare and prosecute said proceedings. When the estate of the defendant in execution upon judgment against any defaulting county officer may be encumbered by a previous *bona fide* mortgage, deed of trust, or other incumbrance or prior lien, whereby the officer cannot legally levy the same, he shall make return of all the facts known to

him or of which he is informed, giving the date and consideration of such deed, to whom made, when recorded, the evidence of any prior lien, and the name of the parties who claim the same. The county attorney may institute proceedings in the name of the county against the parties in the county where the property is situated or where the encumbrance was created, to have their claims and demands, if just, satisfied, and all encumbrances removed, and the proceeds of the sale of the estate rightfully applied. The said funding board may employ additional counsel to aid the county attorney in the preparation and prosecution of all proceedings instituted against defaulting officers or to enforce payment of judgments against them, and by written contract stipulate with them for a reasonable compensation, not exceeding ten per cent. on the amount sued for. Neither the county attorney nor any attorney-at-law employed by the funding board shall receive the money due and owing to the county from any sheriff, collector, or other officer. There shall be added to all judgments rendered in favor of the county against defaulting officers two per cent. upon the amount thereof, except as to damages awarded, which shall be collected and accounted for by all collecting officers, in the same manner and under like responsibilities as other moneys of the county collectible by them under this act. This sum, when received into the treasury, shall, upon the order of said board, entered in their book of proceedings, be paid to the county attorney as his compensation for his said services rendered. It shall be the duty of the court to specify in the judgment the amount of this two per cent. and of the clerk to note the same upon any execution which may issue thereon. If the total amount of the judgment be not received into the treasury, there shall be paid to the county attorney his *pro rata* of whatever sum is received.

SECTION 11. It shall be the duty of the sheriff for the collector of the taxes under this act, at the county court, in January, in the same manner that the sheriff is required to do in relation to his return of his delinquent list of the public revenue, to return to the county court

cent. additional on the tax so due and unpaid. Any sheriff or collector who shall fail to report as herein required, shall be liable to indictment in the Muhlenburg circuit court, and fined not less than one hundred dollars nor more than five hundred dollars for each offense, the fine, less costs and fees, to be collected and paid into the county treasury for the purposes of this act. The county court, in the final settlement with the sheriff or collector, shall charge him with the ten per cent. accruing under the provisions of this section. Any sheriff or collector who shall fail to collect or pay over the taxes as provided herein shall, with his sureties on his bond, be liable by motion on notice served not less than ten days, or by action in the name of said county in the circuit or common pleas court of said county, in which motion or action the said county shall recover of such sheriff or collector and his sureties the amount due the county, with interest from the time it should have been paid, the costs of the motion or action, and ten per cent. damages on the amount found due and recoverable. Judgments in the name of said county against any sheriff or collector, their sureties, or the heirs, devisees, and personal representatives of any of them, shall bind the estate, legal and equitable, of all defendants to said judgments from the commencement of the motion or action till satisfied. No execution thereon shall be stayed by replevin or sale on credit, but in all such cases the estate taken shall be sold for money. Officers and their deputies failing to levy executions in the name of the county or withholding any such execution, and not making return thereof for one month after the return day, or failing to pay the money when collected, shall, together with their sureties, be liable by like motion or action for the amount of said execution and twenty per cent. damages thereon. The county attorney of said county shall prepare and prosecute said proceedings. When the estate of the defendant in execution upon judgment against any defaulting county officer may be encumbered by a previous *bona fide* mortgage, deed of trust, or other incumbrance or prior lien, whereby the officer cannot legally levy the same, he shall make return of all the facts known to

him or of which he is informed, giving the date and consideration of such deed, to whom made, when recorded, the evidence of any prior lien, and the name of the parties who claim the same. The county attorney may institute proceedings in the name of the county against the parties in the county where the property is situated or where the encumbrance was created, to have their claims and demands, if just, satisfied, and all encumbrances removed, and the proceeds of the sale of the estate rightfully applied. The said funding board may employ additional counsel to aid the county attorney in the preparation and prosecution of all proceedings instituted against defaulting officers or to enforce payment of judgments against them, and by written contract stipulate with them for a reasonable compensation, not exceeding ten per cent. on the amount sued for. Neither the county attorney nor any attorney-at-law employed by the funding board shall receive the money due and owing to the county from any sheriff, collector, or other officer. There shall be added to all judgments rendered in favor of the county against defaulting officers two per cent. upon the amount thereof, except as to damages awarded, which shall be collected and accounted for by all collecting officers, in the same manner and under like responsibilities as other moneys of the county collectible by them under this act. This sum, when received into the treasury, shall, upon the order of said board, entered in their book of proceedings, be paid to the county attorney as his compensation for his said services rendered. It shall be the duty of the court to specify in the judgment the amount of this two per cent. and of the clerk to note the same upon any execution which may issue thereon. If the total amount of the judgment be not received into the treasury, there shall be paid to the county attorney his *pro rata* of whatever sum is received.

SECTION 11. It shall be the duty of the sheriff for the collector of the taxes under this act, at the county court, in January, in the same manner that the sheriff is required to do in relation to his return of his delinquent list of the public revenue, to return to the county court

all delinquents in the payment of the taxes levied or imposed under authority of this act; and he shall, for all such as are allowed by the county court, be credited in his settlement with said court. Said court may relist the delinquents or place the collection of same in the hands of other persons, and the same shall be collected and accounted for as other public dues placed in their hands for collection.

SECTION 12. If for any cause the sheriff shall fail to execute the bond provided for in this act, and the county court failing to appoint a collector, the sheriff shall, in virtue of his office, proceed to collect the taxes levied or imposed under this act. He and his sureties shall in all respects and to all intents and purposes, be responsible upon his official bond.

SECTION 13. That for the purpose of receiving, keeping, and disbursing the money collected under this act, the county court shall appoint a treasurer of said county. No person shall be appointed such treasurer unless he be a citizen of the United States, at least twenty-four years of age, nor unless he has resided within said county two years next preceding his appointment. He shall, on or before entering upon the discharge of his duties, take an oath faithfully to perform them, and execute bond to the Commonwealth of Kentucky, with one or more good and sufficient sureties, worth at the time, jointly or severally, at least fifty thousand dollars, to be approved by the county court and filed in the office of the clerk thereof, stipulating for the faithful discharge of the duties of his office, upon which, for any breach thereof, proceedings may be instituted from time to time, by and in the name of the county, or by and in the name of any person aggrieved, by action or motion in the circuit court or common pleas court of said county, or other court of competent jurisdiction, and recovery had to the extent of the damages sustained by the county, or to the extent of the damages sustained by the person or persons aggrieved. The treasurer shall have no right to pay the moneys received by him, or any part thereof, except in pursuance to the orders of the funding board, duly entered in the book in which their proceedings are recorded. The funding board shall furnish

him a certified copy of each and every order of said board for the payment of money.

SECTON 14. The treasurer shall reside and keep his office at the county seat of said county. Upon the resignation of his office or death, or removal from office, the county court shall cause his accounts to be examined and stated, and the money in the treasury counted, and an inventory of the books, stationery, and implements of office taken, which shall be passed to his successor, who shall receipt for the same, which receipt, together with the statement and inventory aforesaid, shall be reported to said court and entered of record therein. If the treasurer is sick and unable to discharge the duties of his office, or if he absents himself from the county, it shall be his duty to recommend in writing to the county judge some suitable person to discharge the duties for him during such sickness or absence; and if the county judge approves the recommendation, he shall cause the same, with his approval, to be entered of record in the county court, after which the person so recommended may perform the duties of treasruer until he is restored to health or returns to the county. The treasurer and his sureties shall be responsible in their official bond for the acts of the person thus appointed by the county judge. The treasurer shall not receive any money into the treasury from any collecting officer or collector of taxes under this act, unless accompanied by the permit of the county judge, stating the amount to be received, on what account, and from whom to be received. He shall immediately make out a receipt for the amount received, and for what and of whom received, and deliver it to the officer or person of whom received.

SECTION 15. The treasurer shall keep in appropriate well-bound books, to be provided by him at the expense of the county, the accounts of all money paid into the treasury, by whom, when, and on what account. He shall keep the accounts of the sinking fund for the redemption of the bonds issued under this act, distinct from the accounts of the fund for the payment of the accruing interest on said bonds; and, in like manner, he shall keep a true account of all sums paid out, when,

all delinquents in the payment of the taxes levied or imposed under authority of this act; and he shall, for all such as are allowed by the county court, be credited in his settlement with said court. Said court may relist the delinquents or place the collection of same in the hands of other persons, and the same shall be collected and accounted for as other public dues placed in their hands for collection.

SECTION 12. If for any cause the sheriff shall fail to execute the bond provided for in this act, and the county court failing to appoint a collector, the sheriff shall, in virtue of his office, proceed to collect the taxes levied or imposed under this act. He and his sureties shall, in all respects and to all intents and purposes, be responsible upon his official bond.

SECTION 13. That for the purpose of receiving, keeping, and disbursing the money collected under this act, the county court shall appoint a treasurer of said county. No person shall be appointed such treasurer unless he be a citizen of the United States, at least twenty-four years of age, nor unless he has resided within said county two years next preceding his appointment. He shall, on or before entering upon the discharge of his duties, take an oath faithfully to perform them, and execute bond to the Commonwealth of Kentucky, with one or more good and sufficient sureties, worth at the time, jointly or severally, at least fifty thousand dollars, to be approved by the county court and filed in the office of the clerk thereof, stipulating for the faithful discharge of the duties of his office, upon which, for any breach thereof, proceedings may be instituted from time to time, by and in the name of the county, or by and in the name of any person aggrieved, by action or motion in the circuit court or common pleas court of said county, or other court of competent jurisdiction, and recovery had to the extent of the damages sustained by the county, or to the extent of the damages sustained by the person or persons aggrieved. The treasurer shall have no right to pay the moneys received by him, or any part thereof, except in pursuance to the orders of the funding board, duly entered in the book in which their proceedings are recorded. The funding board shall furnish

him a certified copy of each and every order of said board for the payment of money.

Secton 14. The treasurer shall reside and keep his office at the county seat of said county. Upon the resignation of his office or death, or removal from office, the county court shall cause his accounts to be examined and stated, and the money in the treasury counted, and an inventory of the books, stationery, and implements of office taken, which shall be passed to his successor, who shall receipt for the same, which receipt, together with the statement and inventory aforesaid, shall be reported to said court and entered of record therein. If the treasurer is sick and unable to discharge the duties of his office, or if he absents himself from the county, it shall be his duty to recommend in writing to the county judge some suitable person to discharge the duties for him during such sickness or absence; and if the county judge approves the recommendation, he shall cause the same, with his approval, to be entered of record in the county court, after which the person so recommended may perform the duties of treasruer until he is restored to health or returns to the county. The treasurer and his sureties shall be responsible in their official bond for the acts of the person thus appointed by the county judge. The treasurer shall not receive any money into the treasury from any collecting officer or collector of taxes under this act, unless accompanied by the permit of the county judge, stating the amount to be received, on what account, and from whom to be received. He shall immediately make out a receipt for the amount received, and for what and of whom received, and deliver it to the officer or person of whom received.

Section 15. The treasurer shall keep in appropriate well-bound books, to be provided by him at the expense of the county, the accounts of all money paid into the treasury, by whom, when, and on what account. He shall keep the accounts of the sinking fund for the redemption of the bonds issued under this act, distinct from the accounts of the fund for the payment of the accruing interest on said bonds; and, in like manner, he shall keep a true account of all sums paid out, when,

to whom, and for what paid. He shall make a clear, distinct, and intelligible report of all money received and disbursed during each year, ending the thirty-first December, which shall exhibit the receipts and disbursements for the year, which report he shall lay before the county court at its ensuing January term, to be filed and entered of record in said court. He shall at all times, when called upon by the funding board or the president thereof, or any commissioner appointed for that purpose by said board, exhibit his books and accounts and vouchers, and his cash on hand or on deposit.

SECTION 16. If the treasurer, or any person acting as treasurer, willfully misappropriate any of the money coming to or in his hands as treasurer, or as acting treasurer, or shall loan or use the same for his own purposes or for the uses or purposes of another, he shall be guilty of felony, and, upon indictment and conviction thereof, confined in the penitentiary for a period not exceeding ten years, at the discretion of the jury.

SECTION 17. The county court of said county shall have the right at any time to require the sheriff as collector under this act, or any special collector, to renew his bonds, or to give additional security, and on his failure so to do may, after due notice and investigation, remove him from office; and shall have the same right in relation to the treasurer.

SECTION 18. The members of the funding board shall each be entitled to receive not exceeding two dollars per day for each day he is in attendance at the meetings of the board, and the treasurer shall be entitled to such compensation for his services as may be prescribed by ordinance of the board, not to exceed five hundred dollars per year, payable quarterly. The rate of compensation to members of the board and to the treasurer, within the limits aforesaid, shall be prescribed by ordinance of the board, and paid out of the treasury upon the order of the board, duly recorded in the journal of their proceedings.

SECTION 19. That for all the purposes of this act the county court of said county, composed of the county judge alone, in case there be no justices of the peace of

said county in commission, or in case a majority of them refuse to act or to concur with him, shall have full power and authority, and it shall be his duty to levy and impose the taxes herein provided for, but this grant of power shall not extend to taxation for any other purpose whatever.

SECTION 20. Should the county court, held by the county judge and justices of the peace, or by the county judge alone, fail for ten days after demand in writing to levy and proceed in good faith to levy and collect a tax as provided in this act, then, and in that event, it is hereby made the duty of the circuit court or judge thereof in vacation, upon being informed of such failure, and satisfactory proof thereof being made by any *bona fide* bondholder or his attorney, to levy and have collected a tax sufficient to pay off the principal and semi-annual interest on past due bonds or coupons issued in pursuance of the provisions of this act.

SECTION 21. This act shall take effect from its passage.

ED. W. TURNER,
Speaker of the House of Representatives.
JNO. C. UNDERWOOD,
Speaker of the Senate.

Approved March 18, 1878.

JAMES B. MCCREARY,
Governor.

By the Governor.
J. STODDARD JOHNSTON,
Secretary of State.

COMMONWEALTH OF KENTUCKY,
OFFICE OF THE SECRETARY OF STATE.

I, J. Stoddard Johnston, secretary of state, certify that the foregoing is a true and perfect copy of an act of the General Assembly of the Commonwealth of Kentucky, passed at its December session, 1877, entitled "An act to authorize and empower the county of Muhlenburg to compromise and fund its bonded indebtedness, issue bonds, and levy and collect taxes to pay the same," as appears from the original enrolled bill on file in my office.

to whom, and for what paid. He shall make a clear, distinct, and intelligible report of all money received and disbursed during each year, ending the thirty-first December, which shall exhibit the receipts and disbursements for the year, which report he shall lay before the county court at its ensuing January term, to be filed and entered of record in said court. He shall at all times, when called upon by the funding board or the president thereof, or any commissioner appointed for that purpose by said board, exhibit his books and accounts and vouchers, and his cash on hand or on deposit.

SECTION 16. If the treasurer, or any person acting as treasurer, willfully misappropriate any of the money coming to or in his hands as treasurer, or as acting treasurer, or shall loan or use the same for his own purposes or for the uses or purposes of another, he shall be guilty of felony, and, upon indictment and conviction thereof, confined in the penitentiary for a period not exceeding ten years, at the discretion of the jury.

SECTION 17. The county court of said county shall have the right at any time to require the sheriff as collector under this act, or any special collector, to renew his bonds, or to give additional security, and on his failure so to do may, after due notice and investigation, remove him from office; and shall have the same right in relation to the treasurer.

SECTION 18. The members of the funding board shall each be entitled to receive not exceeding two dollars per day for each day he is in attendance at the meetings of the board, and the treasurer shall be entitled to such compensation for his services as may be prescribed by ordinance of the board, not to exceed five hundred dollars per year, payable quarterly. The rate of compensation to members of the board and to the treasurer, within the limits aforesaid, shall be prescribed by ordinance of the board, and paid out of the treasury upon the order of the board, duly recorded in the journal of their proceedings.

SECTION 19. That for all the purposes of this act the county court of said county, composed of the county judge alone, in case there be no justices of the peace of

said county in commission, or in case a majority of them refuse to act or to concur with him, shall have full power and authority, and it shall be his duty to levy and impose the taxes herein provided for, but this grant of power shall not extend to taxation for any other purpose whatever.

SECTION 20. Should the county court, held by the county judge and justices of the peace, or by the county judge alone, fail for ten days after demand in writing to levy and proceed in good faith to levy and collect a tax as provided in this act, then, and in that event, it is hereby made the duty of the circuit court or judge thereof in vacation, upon being informed of such failure, and satisfactory proof thereof being made by any *bona fide* bondholder or his attorney, to levy and have collected a tax sufficient to pay off the principal and semi-annual interest on past due bonds or coupons issued in pursuance of the provisions of this act.

SECTION 21. This act shall take effect from its passage.

ED. W. TURNER,
Speaker of the House of Representatives.
JNO. C. UNDERWOOD,
Speaker of the Senate.

Approved March 18, 1878.

JAMES B. MCCREARY,
Governor.

By the Governor.
J. STODDARD JOHNSTON,
Secretary of State.

COMMONWEALTH OF KENTUCKY,
OFFICE OF THE SECRETARY OF STATE.

I, J. Stoddard Johnston, secretary of state, certify that the foregoing is a true and perfect copy of an act of the General Assembly of the Commonwealth of Kentucky, passed at its December session, 1877, entitled "An act to authorize and empower the county of Muhlenburg to compromise and fund its bonded indebtedness, issue bonds, and levy and collect taxes to pay the same," as appears from the original enrolled bill on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of my office this 26th day of March, A. D. 1878, and in the eighty-sixth year of the [SEAL.] Commonwealth.

J. STODDARD JOHNSTON,
Secretary of State,
By THOS. S. BRONSTON,
Assistant Secretary.

Office Supreme Court U. S.
FILED.
JAN 26 1891
JAMES. H. McKENNEY,
CLERK.

Supreme Court of the United States.

BROWN ET AL., APPELLANTS,
vs.
TROUSDALE ET AL., APPELLEES.

ADDITIONAL POINTS AND AUTHORITIES.

As to formal parties—

Walden *vs.* Skinner, 101 U. S., 589.
Hatch *vs.* R. R. Co., 6 Blatchford, 114.
Bacon *vs.* Reeves, 106 U. S., 713.
Winchester *vs.* Loud, 108 U. S., 130.

As to separable controversy—

Langdon *vs.* Fogg, 21 Blatchford, 398.

One disclaiming, not a necessary party—

Dillon's removal of causes, Sec. 119, Note 3.
Bailey *vs.* Ins. Co., 12 Reporter, 577.
Ellerman *vs.* R. R. Co., 2 Woods, 120.

On construction of removal acts—

Dillon's Synopsis, Sub Div. 1 and 2, Sec. 102.
Removal cases, pp. 194–196.

D. M. RODMAN,
Attorney for Appellees.

JAN 9 1891
JAMES H. McKENNEY
CLERK

Supreme Court of the United States.

R. H. Brown et al., - - - - - - - - - Appellants.

VERSUS

Charles W. Trousdale and James Alexander, - Appellees.

BRIEF FOR APPELLEES BY

D. M. RODMAN,
Attorney for Appellees.

ELI H. BROWN, *Of Counsel.*

JOHN P. MORTON & CO., PRINTERS, LOUISVILLE.

SUPREME COURT OF THE UNITED STATES.

R. H. BROWN ET AL., - - - - - *Appellants*,

VERSUS

CHARLES W. TROUSDALE AND JAMES ALEXANDER, - - - - - - - *Appellees.*

Brief for Appellees.

This is an appeal from the decree of the United States Circuit Court for the District of Kentucky, at Louisville, dismissing the bill or petition of appellants, who claim to number seven hundred, and call themselves "the United Order of Tax-payers of Muhlenburg County."

The object of the order was to resist the collection of taxes to pay the county's bonded debt, created to pay for the county's stock in the Elizabethtown & Paducah Railroad Company, which was subscribed under the provisions of an amendment to the charter of that company, which became a law February 24, 1868, the second section of which is in these words:

"SEC. 2. That whenever the said Elizabethtown & Paducah Railroad Company shall request the County Court of any county through or adjacent to which it is proposed to construct said road to subscribe, either absolutely or upon specified conditions, a specified amount to the capital stock of said company, the County Court so requested shall forthwith order an election to be held at the several voting places in said county, on a day to be fixed by the court, not later than thirty days after the making of the order, and shall appoint judges and other officers to hold said election." (See 1st vol. Kentucky Session Acts, 1867 and 1868, p. 622.)

Under this section and act the company named requested the County Court of Muhlenburg County to submit to the voters of the county a proposition to subscribe for four thousand shares of one hundred dollars each of the capital stock of the company, which was to be paid for in the county's bonds, having twenty years to run, with interest coupons, payable semi-annually, at seven per cent per annum.

The election was ordered by the County Court, consisting of the County Judge alone, and was regularly held on the 30th day of May, 1868, at which there were cast 1,321 votes, which was about an average vote of the county, as it appears that at the regular election for members of the legislature in 1867, there were cast only 1,224 votes; and in 1869 for the same office there were cast 1,228 votes; and at an election for a school tax, at the regular election in 1869 there were cast a total of 1,249 votes. The proposition was carried. There were 771 votes for the subscription, and 550 against it.

The vote was then canvassed and certified; the bonds were printed and issued, delivered to the railroad company, and by them sold to the public.

The company delivered the certificate of stock to the County Commissioners, appointed by the justices, under the act. The county held the said certificate, and still holds it; and by its commissioners voted at the stockholders meetings until the year 1874. (See agreed statement of facts, Pr. Record, p. 96.)

The railroad was completed from Elizabethtown to Paducah, a distance of one hundred and eighty-five miles, in the year 1871. In the year 1875 it was placed in the hands of a receiver, and was sold to its present operators; but it has ever since been operated, and its facilities greatly increased, by its present owners. It runs within one mile of Greenville, the county seat, as specified in the subscription contract.

The city of Louisville originally subscribed one million of dollars at the same time that Muhlenburg County subscribed four hundred thousand dollars, and every county on the line of the railroad, and nearly every town, subscribed large sums—

none of which have been repudiated (except these bonds), though some were scaled or compromised, but none lower than at ninety cents.

In 1873 the city of Louisville gave another million of dollars on the same terms, to build a forty-five mile branch from Cecilia to Louisville, which was built before the sale of the franchises in 1875, and a through line was thus created from Paducah to Louisville, the whole road being nearly two hundred miles long.

This railroad runs more than twenty-six miles through Muhlenburg County, from east to west, and was the cause of the construction of a road from Owensboro to Nashville, which crosses the E. & P. R. R. at Central City, in Muhlenburg County, and runs about thirty miles through the county.

The reason why this county took so large a subscription was because it was the largest, territorially, on the line of the road; was the most inaccessible, and is entirely underlaid with coal, which it then had no means to get to market.

By reference to the maps of Kentucky for 1868 and 1890, it will be seen that there are many large towns in the county where there were none before.

The county has taxed this railroad for county purposes at a valuation of two hundred and sixty thousand dollars. If the road running at right angles has been taxed at the same rate, the railroads alone, in their own property, will have added to the taxable wealth of the county more than half a million of dollars.

The County Court levied taxes to pay the coupons upon the bonds in dispute until 1874, when the justices met with the County Judge and insisted upon voting down a proposition to make the usual annual levy.

The justices persisted in their refusal to levy; and to prevent annoyance from writs to compel them to levy they all resigned in the year 1876, and there has never been a justice elected in the county since.

Many suits were brought against the county, and in every instance the validity of the proceedings and the tax has been upheld.

One of these cases came by writ of error to this court, where it was held that the County Judge alone, without the concurrence of the justices, could be compelled by mandamus to make the necessary levies. (See Merriwether v. Muhlenburg County, 120 U. S. 354.)

Because of the pressure from the courts and public opinion it became necessary to do something. The bondholders were clamoring for what the repudiaters called a "force bill;" and the member from the county in the legislature at Frankfort found himself unable to resist it alone, and called for help, which was sent him in a very respectable committee, headed by the Circuit Judge of the circuit, and composed of influential citizens.

The committee found that while the legislature might not sanction repudiation, it might give the county an opportunity to compromise. (See Judge Charles Eaves deposition, Pr. Record, p. 265.)

Acting upon this plan, a bill was prepared authorizing the county to compromise and fund its bonded indebtedness by means of a funding board of one member from each justice's district, to be elected by the people; and when the funding board made compromises, the holder was to surrender his old bonds, for which new ones were to be issued, and the County Court were required to levy and collect an annual tax to pay the interest on the new bonds and to create a sinking fund to pay the principal at maturity (twenty years), or after five years, at the county's option.

In 1878 a funding board was elected, and in 1879 a few bonds were funded at thirty cents on the dollar and at six per cent interest, and the County Court levied taxes to pay this interest. In 1885 funding began on a large scale at thirty per cent of the old bonds, and not at par, as alleged in the bill, which artfully shows the principal only of the old bonds compromised, and says nothing about the enormous accumulation of interest since 1874. The funding was at thirty per cent, as stated, upon principal and interest. For instance, the four hundred thousand dollars, and interest since 1874, amounted to

eight hundred thousand dollars; and if the funding board had proceeded then (1885) at the same rate, the bonded debt of the county would have been reduced from say eight hundred thousand dollars to say two hundred and fifty thousand dollars, or thirty per cent of the amount of the debt. On the 25th day of May, 1885, the County Court, on the recommendation of this funding board elected by the people, ordered a levy of one dollar on each one hundred dollars of property in the county. (Pr. Record, p. 90.)

The tax bills were made out and placed in the sheriff's hands, and he was proceeding to collect when this action was commenced by petition in the Muhlenburg Circuit Court, wherein these appellants, styling themselves as above, sought to have all the issues of bonds declared illegal, the acts under which they were issued declared unconstitutional, and to have the election of May 30, 1868, set aside, because it was, as alleged, "unjust, oppressive, and procured by fraud."

The petition contains about seven hundred names, but does not show that any one of them will have to pay as much as five thousand dollars—or that the whole party will, in the aggregate, have to pay that sum.

The Circuit Judge allowed them to procure an injunction to stop the collection of the taxes then in the sheriff's hands, and the whole operation of the funding board upon the execution of an injunction bond in the penalty of *three thousand* dollars.

Two bondholders, resident in the county, one of each class, were collusively made parties. They came into court afterward and offered to confess judgment.

The petition named all the owners of both classes, or issues, of bonds as parties—not by name, but as a class.

At the appearance term (1885) of the Muhlenburg Circuit Court, appellee Charles W. Trousdale, who held seven thousand dollars of new or compromise bonds, for which he had surrendered over twenty-two thousand dollars of old bonds and coupons, and appellee James Alexander, who held about three thousand dollars of old bonds, and both of them being citizens

of Tennessee, filed their petition to be made parties, and were made such by order of the court. (Printed Record, p. 66.)

They then filed a petition for removal to the United States Circuit Court, showing the grounds; and the case was, upon their petition, removed to that court. The injunction was dissolved November 10, 1885, by Circuit Judge Baxter, and a motion to remand was overruled.

An agreed statement of facts was filed (see Pr. Record, p. 96), and voluminous proof being taken by depositions, the case came on for hearing before Circuit Judge Howell E. Jackson, who dismissed the bill; and appellants have appealed. The appellants' assignment of errors is too general, and we prefer to arrange in our own way the questions involved, which may be thus stated:

First: That the charter of the Elizabethtown & Paducah Railroad Company, wherein it allowed counties to take stock in a railroad company, was not in conflict with the Kentucky Constitution, which, in Section 33, Article 2, says that the credit of the Commonwealth shall never be given or loaned in aid of any person, association, municipality, or corporation.

Second: The election held May 30, 1868, was not void or invalid, because it was ordered by the County Judge alone, without the concurrence of the justices.

Third: There was no fraud in the election of May, 1868, nor any thing oppressive or unjust in the subscription of Muhlenburg County, even if such matter can now be considered.

Fourth: That this court can not, in any event, reverse the decree dismissing the petition, but should dismiss the appeal (or affirm as a delay case), because there is nothing in the record to show that any one of the appellants will be affected to the sum or amount of five thousand dollars (or that all of them together will). They can not aggregate their claims to make the jurisdictional amount.

Fifth: Was the case properly removed from the State to the United States Court?

Now, of the *first:*

The question as to whether Section 33 of Article 2, prohibiting the State from taking stock in corporations for public improvement, applies to cities and towns, has not been an open one for thirty years. It was settled in 1852 that such legislation was not in conflict with the Constitution, and it has ever since been upheld by an unbroken current of decisions.

Slack v. Maysville, 13 B. Monroe, 1;
Maddox v. Graham, 6 Am. Law Reg. (1858), 589 to 631, from Mason Circuit Court.
Maddox v. Graham, 2 Metcalfe (Ky.), p. 85.
Tyler v. E. & P. R. R. Co., 9 Bush, 513.
Merriwether v. Muhlenburg Co., 120 U. S. 354.

The authorities cited are regarded as leading cases upon this question.

In Slack v. Maysville (13 B. Monroe, 1), the court considered the question in a very lengthy opinion, affirming the constitutionality of the charter of the Maysville & Lexington Railroad Company, under which the county of Mason had subscribed stock in said company. The opinion of the court was delivered by Judge Marshall, Judge Hise dissenting. The discussion was very exhaustive, and occupied the first 150 pages of 13th Ben Monroe's Reports, the dissenting opinion, according to Mr. Dembitz (in his Kentucky Jurisprudence, p. 101), being of "inordinate length."

The question again arose in the Mason Circuit Court over the subscription made by the city of Maysville to the same company, under an amendment to its charter; and the constitutionality of the charter was affirmed by Circuit Judge Phister in a very learned opinion, which has been preserved by having been published in 6 Am. Law Register, 589, Maddox v. Graham (1858).

The case then went to the Court of Appeals, where the court, after approving Judge Phister's views, said:

"In this court it is not a question now open for argument. It is one that has formerly been before this court, was thoroughly argued, maturely considered, and was solemnly and authoritatively decided." (2 Metcalfe, p. 86.)

On page 87 Judge Wood thus closes the discussion:

"It (Slack v. M. & Lex. R. R. Co.) was preceded and has been followed, in this State, by quite a number of cases in which the constitutionality of such acts of the legislature as those now under consideration has been presented to this court in divers forms and under different circumstances, and in every case such laws have been held constitutional." (2 Met. 87.)

The next leading case (Tyler v. E. & P. R. R. Co.) arose in 1873 under this very charter under consideration, wherein certain tax-payers sought to enjoin the city of Lonisville from subscribing a second million of dollars of stock to this very enterprise, in which Muhlenburg County had already embarked.

The court said:

"Since the adoption of the present Constitution the power of the legislature to authorize such taxation has been repeatedly considered, and uniformly upheld." (9 Bush, 516.)

The question has also been set at rest in this court in construing this very charter, in a case where this very county was a party, where you say you will follow the decisions of the State courts, and where you show, by reported and unreported cases, which are fully discussed in the opinion, that such legislation has been uniformly upheld in Kentucky. (Merriwether v. Muhlenburg Co., 120 U. S., p. 354.)

Thirty years and more ago, in laying the question to rest, Judge Wood, in speaking for the Kentucky Court of Appeals, used all the adjectives he could conceive of to cover it up forever. He said, "It was thoroughly argued, maturely considered, and solemnly and authoritatively decided," and this language is fully applicable to the settlement of the question in this court. It is no longer an open question in either court.

Second:

The County Court of Muhlenburg County had no discretion as to whether it would submit the question of taking the stock to a vote of the people. Consequently, it made made no difference whether the County Judge was the judge alone or the judge associated with the justices.

By the Revised Statutes of Kentucky, then in force, a county could not be made liable for exceeding fifty dollars unless the liability was created by the Court of Claims, which was composed of two justices from each voting precinct in the county; and this court, presided over by the County Judge, was the fiscal court of the county.

The learned counsel for the appellants complains all through his bill of forty-nine pages that the charter in question is in conflict with this provision of the Revised Statutes, now the General Statutes of Kentucky; but the point is made upon the mistaken idea that a general law controls a special one.

These statutes and this charter are both creatures of the legislature, and it was clearly within the power of that body to provide a different mode by which the county could make itself liable.

The only point where there can be any question is in what the charter meant when it named the County Court; but this was conclusively settled to be the County Court composed alone of the County Judge. See case of Warren County Court v. R. R. Co., 10 Bush (Ky.) Rep., 711, which was discussed and followed by this court in Merriwether v. Muhlenburg County, 120 U. S., on page 357. It was there stated that, as the court was obliged to give the people an opportunity to vote, and it had no discretion in the matter, it was immaterial which body acted.

It was immaterial for another reason: that the people were themselves to decide whether they would create the liability, and it was therefore unnecessary for their representatives to pass upon the question.

If, however, the Court of Claims was meant, that body has in numerous ways recognized the bonded debt, as its records show.

But there can be no doubt that the legislature did not mean the Court of Claims when it enacted the funding bill of March 18, 1878, because at that time there was not a justice in the county, and a tribunal was specially created to take the place of the justices. This funding board was made a corporation. Its members were to be elected by the people, there being one mem-

ber from each voting precinct. It was given power to contract as to the compromise of the debt; and upon its certificate the County Court was bound to act.

The language of the funding act, section 7, is:

"That to pay the accruing interest on the bonds issued under the authority of this act, and to provide a sinking fund for their redemption at maturity, or after five years from their date, an annual tax shall be levied by the County Court." (1 vol. Acts General Assembly of Kentucky, p. 604.)

We contend that all these questions are also laid to rest by the action of the Kentucky Legislature in passing the funding bill, by the action of the people of the county in procuring the act, and in acting under it by their regularly constituted authorities, elected by themselves.

Third:

After all that has occurred in the making and compromise of this debt, the appellants at this late day attempt to raise the question of fraud in the election of May 30, 1868, and to argue that the whole thing was unjust and oppressive.

We do not think that the court would listen with any patience to the attempt to get behind the returns of that election; but, as an attempt is made to get sympathy by claiming that the county got nothing, has lost its stock in the enterprise, and has been saddled with an enormous debt, which is oppressive to its people, we beg the indulgence of the court in a few remarks that will show the falsity of this claim.

The county did not fail in its enterprise. The enterprise succeeded, and the railroad was fully completed in 1871. Since then the people have had the benefit of this railroad and all others it caused to be built. The railroad itself added largely to the taxable wealth of the county, which the county has not been slow to tax for county purposes, thus saving the citizens from some of the burdens of the county expenses. The railroad must certainly have added largely to the taxable wealth in other than the railroad property proper. A glance at the maps of 1868 and 1885

will show that towns have sprung up there, notably Central City, at the crossing of the road and the Owensboro & Nashville Railroad.

Then, again, the county for four years after the completion of the road enjoyed the benefits of the enterprise by voting its four thousand shares of stock in the stockholders' meetings. It held the stock, and voted it, in 1874, and was exercising its rights as a large stockholder when the justices of the county were meeting to prevent the County Judge from levying taxes to pay the interest.

But what if the county did lose its stock? That may have been its own fault, as it was certainly taking a hand in the management. The object of the county embarking in the enterprise was not to make money by a rise in the value of its shares, or by receiving dividends upon them. It was not merely a commercial venture to make money. The main reason why the State permitted the county to so give its aid was to promote a great public enterprise that added to the wealth of the people, and to their comfort and convenience; and Muhlenburg County, above all communities, has realized the benefit of this great enterprise.

The appellants, in their bill, show that the county was territorially one of the largest in the State, and complain that when the election was held in 1868 the county was sparsely settled and inaccessible, and that the people could not readily communicate with each other. Now this is all changed, and it was no doubt to remedy these wants of this large territory that this large subscription was taken.

This shows that this enterprise, in the public reasons for which it was undertaken, was not a failure; as a stock-jobbing enterprise it may have been.

Then, again, is there any thing oppressive in this debt? Is there any reason to sympathize with the alleged tax-ridden people of this county?

Judge Phister said that all right thinking men sympathized with the city of Maysville in their despondency when their bright visions of success were turned to gloom. (6 Am. Law

Reg., p. 603.) But in that case the city had to pay its bonded debt, but got no railroad; but even in that case the judge said that he could not find any reason to prevent the collection of the debt; and if no reason could be found there to cause the court to hunt for a reason, certainly there can be none found here.

Except paying the interest on the small lot of bonds funded in 1879, this county has not paid a dollar on this bonded debt since the year 1874. If she had been compelled to pay the face of the bonds and the vast accumulation of interest, which in 1885 was nearly as much as the principal, there might have been some cause to complain. But a plan was provided whereby, if these alleged tax-payers had let it alone, this eight hundred thousand dollars of debt would have been reduced to less than two hundred and fifty thousand dollars, with a reduced rate of interest. Suppose it to be two hundred and fifty thousand dollars, it clearly could not be oppressive.

If the other railroads in the county are taxed at ten thousand dollars per mile, as this one is (Pr. Rec., p. 94), it will make the railroad property alone amount to five hundred and sixty thousand dollars, and they would, therefore, pay of this enjoined levy the sum of five thousand six hundred dollars, or more than one third of the interest on the funded debt—a state of affairs that goes far to illustrate the absurdity of the claim that there is any hardship on these people to pay this debt.

If this court has the time and inclination to indulge in any sympathetic remarks, we invoke their expression in favor of the thousands of good people in the county whose prosperity and good name are affected by these doings of this impudent faction of alleged tax-payers.

Fourth: APPELLATE JURISDICTION.

This question can be made now, because the record was so voluminous that its consideration heretofore would have required it to be read.

Semple v. Logan, 4 Wall. 431;

Phillips' Practice, p. 225.

Our contention is that not one of these alleged tax-payers

who appeal shows that there is five thousand dollars involved as to him; that is, that he would have to pay that amount if the tax was collected.

The bill does not even show that the whole faction or order would have to pay that much, but the claims can not be aggregated to give jurisdiction, although all are parties in the same record.

Farmers Loan and Trust Co. v. Waterman, 106 U. S. 265;
Adams v. Crittenden, *Ibid.* 576;
Taffer v. Wise, 110 U. S. 398.

Only those can appeal whose decrees exceed five thousand dollars.

Stewart v. Dunham, 115 U. S. 61.

When several creditors unite in a suit in equity, each claiming a *pro rata* share of common property, each creditor's right to appeal depends upon his own claim.

Chatfield v. Boyle, 105 U. S. 231;
Paving Co. v. Mulford, 100 U. S. 147;
Ex parte B. & O. R. R. Co., 106 U. S. 5.

Where land is assessed for taxation, each owner being liable only for amounts assessed against him, their several taxes can not be united to make up a sum necessary to allow an appeal.

Russell v. Stanard, 105 U. S. 303.

Our contention is shown to be correct by the fact that this United Order was permitted to enjoin the tax by giving a bond in the penalty of three thousand dollars.

It is no answer to these arguments to say that the whole county is affected to a greater amount. Neither this county nor the funding board is a party appellant. The county was not a party to the record in the lower court, and it can not be made one here.

Payne v. Miles, 20 Howard, 219;
Bayard v. Lombard, 9 Howard, 530;
Phillips' Practice, p. 71.

The sheriff was a party, and certain members of the funding board were parties, but that did not make the county nor the funding board a party.

Davis v. Gray, 16 Wall, 220;

Osborn v. U. S. Bank, 9 Wheaton, 797.

Fifth: Was the case one within the jurisdiction of the United States Circuit Court?

The appellants in their assignment of errors contend that the case should have been remanded, for the two reasons that there was no separable controversy, and that the appellees, Alexander and Trousdale, were collusively made parties for the purpose of removing the cause.

We do not know from the indefinite and general character of this assignment of error, whether the appellants mean that the presence of the county officers or the alleged defendants or parties, Glenn and Park, kept it from being separable.

If the court considers this point at all, it will be necessary to look into the record to see what effect the presence of any of said persons had upon the jurisdiction.

George D. Park and Robert Glenn, one holding a $100 original bond, and the other a $100 compromise bond, were nominated as defendants to the petition. They were not made parties for the purpose of having some one to defend in good faith, but they were mere men of straw, held or controlled by a string in plaintiffs' hands, who were to fall at the first fire, surrender at the first opportunity, or in some way aid the plaintiffs' side and cause as occasion might offer. The effect of their contemplated action upon the question of removal they did not foresee, but they expected to aid in some other way by allowing the plaintiffs to take judgment by default, by preventing a defense, or some such way. And so as soon as a motion was made to dissolve the injunction and a demurrer was hastily filed by *defendants* (Pr. Rec., p. 65), these men of straw came into court and filed a joint affidavit and separate answers, stating in the affidavit "*that believing that the justice is in the plaintiffs, they do not choose to resist the plaintiffs' petition,*" and in their separate answers that they "*make no defense to the petition,*" and they asked that the motion to dissolve the injunction *be withdrawn as to them.* (Pr. Rec., pp. 72 and 73.)

We earnestly contend that this conduct of these men of straw was to range them upon the plaintiffs' side of the controversy; that it as completely eliminated them from the record and the controversy, so far as their presence effects any *bona fide* holder, as if they had never been made parties at all.

The appellees, Alexander and Trousdale, as soon as they were made parties filed their petition for a removal, which was strictly formal, setting out that the amount involved exceeded $500, that they were citizens of the State of Tennessee, that all the plaintiffs were citizens of Kentucky and were such at the commencement of the action, that the county officers had no pecuniary interest in the controversy; that the defendants, Glenn and Park, refused to make any defense to the action, but that they were acting in concert with the plaintiffs, that they (Alexander and Trousdale) were the only real parties adverse to plaintiffs; that in the action there was a controversy wholly between citizens of different States, and which could be fully determined as between them.

They tendered a good bond and moved the court to transfer the cause to the United States Circuit Court. The affidavits of Glenn and Park (Pr. Rec. p. 71), Louis Jones, and C. L. Morehead were read upon the hearing. It is noticeable that in Glenn and Park's affidavit they deny "collusion," but do not deny any fact alleged in the petition for removal. Jones and Morehead simply say that in their opinion many of the county bonds in dispute were held in Kentucky, but they do not disclose a single name, and no other bond holder was ever made a party.

The State Court took the matters under advisement until the next day and then entered an order (Pr. Rec. p. 73) in which it said "*that the court being sufficiently advised ordered the petition to be filed of record,*" accepted and approved the bond and removed to the United States Circuit Court at Louisville.

To this order the plaintiffs took no exception whatever. The transcript was filed in the United States Circuit Court at once.

The plaintiffs immediately entered their appearance there, and on the 19th day of September, 1885, moved to remand and filed

grounds (Pr. Rec. p. 74) claiming that the cause was not a removable one, that the defendants, Trousdale and Alexander, were not real parties, but had allowed the use of their names to the bond holders who lived in Kentucky. Interrogatories were filed to them, which they answered, and their depositions were filed, but they are not copied into this record. (See clerk's return to certiorari). The Circuit Judge, John Baxter, overruled the motion to remand. As the Circuit Court decided that there was no collusion, its decision in the absence of the proof must be deemed correct.

As proof that there was a separable controversy, Alexander and Trousdale then filed their answers to the petition or bill, and made the only controversy that was ever made, and on final hearing Judge Howell E. Jackson, by dismissing the bill on final hearing, decided that the case was removable and that his court had jurisdiction, because the act of Congress made it his duty, if it appeared at any time that it was not a removable cause, to remand it to the State court. (See Sec. 5, Act 1875.)

It will thus be seen that three judges have decided that there was a separable controversy within the meaning of the act of Congress, and that there was no collusion on appellees' part, and as they had the actors before them, and were conversant with the local laws under which the persons and officers were made parties, their opinions ought to be entitled to great weight. (Potomac Steamboat Co. v. Steamboat Co., 109 U. S. 701.)

The logical mode of determining whether there is a separable controversy is to find whether the court can proceed to a decree settling the matter in dispute with the parties before it. (Hotel Co. v. Wade, 97 U. S., p. 21.) This was a case where resident holders of a hotel company's bonds refused to join in a foreclosure proceeding with certain non-resident holders who then alone made the controversy, making the others defendants, and this court held that their refusal to join gave the United States Circuit Court jurisdiction of the non-residents' bill. (97 U. S., p. 21.)

The fact that Glenn and Park were co-defendants in the cause

makes no difference unless they were on their side of the controversy. This court has, perhaps, a hundred times decided that the substance and not the form is to be regarded in arranging the parties to a controversy. (Osborn v. U. S. Bank, 9 Wheat. 799; Removal Cases, 100 U. S.)

Applying these rules and principles we find that there was, as the sequel showed, a controversy as to the validity of these two classes of bonds, which Trousdale and Alexander maintained on the one side, and which the plaintiffs, Glenn and Park, on the other hand denied.

The Circuit Court's decree in dismissing the bill was a judicial decision that there was a separable controversy, that is to say, that the only question was the validity of these county bonds. Alexander and Trousdale, the only appellees here, were the only actors on the affirmative side of that question.

Nor was the presence of the sheriff and the members of the funding board as defendants with appellees any reason why the case could not be removed.

It has been frequently held that ministerial officers, such as United States marshal, a sheriff, a county, State, or township officer, are merely formal parties and do not affect the co-defendant's right to removal. (Harter v. Kernochan, 103 U. S. 562; Wade, U. S. Marshal, v. Wortman, 29 Fed. Rep. 754; Brown v. Strode, 5 Cranch, 303; McNutt v. Bland, 2 Howard, 10; Wormley v. Wormley, 8 Wheaton, 422; Fish v. R. R. Co., 6 Blatchford; Sioux City R. R. Co. v. Ry. Co., 27 Fed. Rep. 770; Desty's Removal of Causes, p. 124, sec. 10m, and Appendix, p. 253, and cases there cited.)

In Harter v. Kernochan, certain tax-payers brought suit to have the bonds of Harter Township declared invalid, and the State, county, and township officers were made defendants and sought to be enjoined. Kernochan was permitted to be made a party defendant after a default judgment, and being a citizen of another State he was permitted to remove the case, although the State, county, and township officers who were enjoined, were his co-defendants.